

1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TENNESSEE

3 AT CHATTANOOGA

4 :
5 UNITED STATES OF AMERICA, :
6 Plaintiff, :
7 v. : 1:04-CR-160
8 REJON TAYLOR, :
9 Defendant. :

10 Chattanooga, Tennessee
11 October 14, 2008

12 BEFORE: THE HONORABLE CURTIS L. COLLIER,
13 CHIEF UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE PLAINTIFF:

16 STEVEN S. NEFF
17 CHRISTOPHER D. POOLE
18 Assistant United States Attorney
19 1110 Market Street, Suite 301
20 Chattanooga, Tennessee 37402

21 FOR THE DEFENDANT:

22 WILLIAM H. ORTWEIN
23 Post Office Box 38
24 Hixson, Tennessee 37343

25 HOWELL G. CLEMENTS
1010 Market Street, Suite 401
Chattanooga, Tennessee 37402

26 JURY TRIAL
27 SEVENTEENTH DAY OF TRIAL

APPEARANCES: (Continuing)

FOR THE DEFENDANT:

LESLIE A. CORY
FREDERICK L. ORTWEIN
1010 Market Street, Suite 306
Chattanooga, Tennessee 37402

— — —

INDEX OF PROCEEDINGS

	<u>MARK DOUGLAS CUNNINGHAM</u>	
11	Cross-Examination by Mr. Poole	2459
	Redirect Examination by Mr. Lee Ortwein	2464
12		
	<u>JAMES J. MELIA</u>	
13	Direct Examination by Mr. Poole	2484
	Cross-Examination by Mr. William Ortwein.	2495
14		
	Charge Conference	2499
15		
	Closing Argument by Mr. Poole	2562
16		
	Closing Argument by Mr. William Ortwein	2584
17		
	Rebuttal Argument by Mr. Neff	2610
18		
	Jury Charge	2628
19		
20		
21		
22		
23		
24		
25		

1 GOVERNMENT'S EXHIBITS

2
3 S3 CD of telephone calls 2487
4 S3A Transcript of Exhibit S3 (For ID only) 2487
5 S4 CD of telephone calls 2489
6 S4A Transcript of Exhibit S4 (For ID only) 2489

7
8
9
10 DEFENDANT'S EXHIBITS

11
12
13 DS18 Transcript of call (Government's S4A) 2497
14 (For identification only)
15 DS19 CD of Power Point slide used during 2645
16 government's closing argument
17 (For identification only)
18
19
20
21
22
23
24
25

1 THE COURT: Please be seated.

2 The witness may return to the stand.

3 MS. CORY: Your Honor, before Dr. Cunningham takes
4 the stand, we received an order and memorandum the Court had
5 issued, I guess this morning. I have not had an opportunity to
6 fully review it, but we would request an opportunity to get
7 some clarification on the motion regarding Dr. Cunningham's
8 testimony.

9 THE COURT: Very well.

10 MS. CORY: It was my hope that this would be-- My
11 apologies to the jury, but it was my hope that this would be a
12 jury-out conference so Your Honor could explain some of the
13 rulings.

14 THE COURT: What page do you have?

15 MS. CORY: One specific page is Page 28 of the
16 ruling. Your Honor references a specific case, which does
17 stand for one proposition but does not stand for another
18 proposition.

19 THE COURT: The *Edelin* case?

20 MS. CORY: Yes, Your Honor. In that case the
21 government withdrew its future dangerousness aggravator.

22 THE COURT: Which made it irrelevant.

23 MS. CORY: Which made testimony regarding future
24 dangerousness --

25 THE COURT: Irrelevant.

1 MS. CORY: -- irrelevant.

2 THE COURT: And the parallel is, because of the facts
3 in this case, that same testimony is irrelevant.

4 MS. CORY: The parallel, to us, would be that this
5 jury is going to have to decide Rejon Taylor's future, and they
6 have no context for deciding what his future is going to be
7 like. And we have experts who could tell the jury what his
8 future is going to be like.

9 THE COURT: Well, this Court has complete confidence
10 that the jury will use its knowledge and its intellect and
11 reach the appropriate decision. And the jury can do that
12 without irrelevant information being presented to it.

13 MS. CORY: The jury does have one member who has
14 done, I think, some private volunteer work at state facilities.
15 And they will probably rely on him to tell them what Rejon
16 Taylor's future is like. And I think that that would be
17 inappropriate and irrelevant, but I think it's very likely to
18 happen.

19 THE COURT: Right. That would also be inappropriate.
20 And the Court would be prepared to tell that particular juror
21 that she should not do that in deliberation.

22 MS. CORY: Thank you, Your Honor. The other matter
23 that was of particular concern to us -- and the Court may have
24 addressed it and I simply not have seen it. But regarding
25 Dr. Cunningham's expertise, we provided the Court with numerous

1 affidavits from other very learned social scientists, we
2 provided the Court with his body of scholarly work wherein he
3 has done both large-scale and small-scale studies of various
4 prison populations, and the Court has ruled that Dr. Cunningham
5 is incompetent as an expert to testify in regard to the very
6 matters that he is acknowledged throughout this country as an
7 expert on. And we would like the Court to at least reconsider
8 that part of its ruling of last week.

9 THE COURT: Well, to the extent that the Court
10 indicated that Dr. Cunningham was not knowledgeable in areas in
11 which he's written and spoken, that was not the Court's intent
12 to say. I don't believe, though, that the witness was being
13 offered as an expert in Bureau of Prisons rules, regulations,
14 policies, et cetera. I think he was a fact witness there.

15 With respect to any testimony about Bureau of
16 Prisons rules, policies, or procedures, that's actually a role
17 of the Court and not of any witness. So Dr. Cunningham should
18 not be giving any testimony about what the policies,
19 procedures, or rules of the Bureau of Prisons are. That's a
20 legal instruction that could only come from the Court. And to
21 the extent he's talking about particular prisons and things,
22 he becomes a fact witness. And his expertise has nothing to
23 do with him being a fact witness.

24 MS. CORY: Yes, Your Honor. We were putting him
25 forward in terms of his -- the studies he has conducted

1 regarding different prison populations, different types of
2 offenses --

3 THE COURT: Well, I don't question his ability to
4 have knowledge in those areas. That was not what the Court--
5 I hope I didn't say that. That surely was not the Court's
6 intent. But when he starts talking about the Bureau of
7 Prisons' policies and procedures and what they're going to do,
8 he's not testifying as an expert then, he's testifying as a
9 fact witness.

10 MS. CORY: Yes, Your Honor. So the Court was not
11 questioning his expertise in his particular --

12 THE COURT: Field, no.

13 MS. CORY: -- field as a social scientist who has
14 studied prison populations, only he cannot venture over into
15 the role of the Court and the judges. Is that correct?

16 THE COURT: That's correct. And to a lesser extent,
17 when he becomes a fact witness, there has to be some minimal
18 standards of reliability there. The rules of evidence are
19 relaxed here. So it is not strictly true that we hold a fact
20 witness in this type of hearing to the same standards as in the
21 guilt phase, but, for example, if the defendant's sister came
22 in and started telling us about what particular Bureau of
23 Prisons facilities do and what their capabilities are, I don't
24 know that we would want that. She is a fact witness, and she
25 is talking about things. She may have studied these things,

1 she may have looked at TV to get information, may have
2 interviewed people, she may have made visits, but I'm just not
3 comfortable that's the type of evidence we need to be having in
4 this type of proceeding. But the ultimate issue is that the
5 testimony that Dr. Cunningham was going to give is not relevant
6 to the issues in this particular case. It might be relevant in
7 some other case, but it's not relevant in this particular case.

8 MS. CORY: Thank you, Your Honor. We would still
9 tender him as an expert, and retain our position that he has
10 sufficient factual knowledge. But I understand Your Honor's
11 ruling.

12 THE COURT: And I think *United States v. Johnson*
13 tells me what I have to do when that is -- when that offer is
14 made?

15 MS. CORY: Yes, sir. Thank you.

16 THE COURT: Cross-examination? And, Mr. Poole, in
17 your cross-examination, in light of our discussion, then, stay
18 away from any mention of the Bureau of Prisons.

19 And, Dr. Cunningham, I'd ask you to do the same
20 thing. In your responses, do not mention the Bureau of
21 Prisons.

22 And, Mr. Poole, why don't you try to ask just
23 leading questions. That might minimize the risk of us getting
24 into the Bureau of Prisons.

25 MR. POOLE: Yes, sir. I will.

1 THE WITNESS: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. POOLE:

4 Q Good morning, Dr. Cunningham.

5 A Good morning.

6 Q My name is Chris Poole, from the U. S. Attorney's
7 Office. We met briefly last week, I think.

8 A Yes, sir, that's correct.

9 Q Thanks for coming back, I guess, this morning.

10 A Thank you.

11 Q You testified last week about your background with
12 respect to articles you had written and schooling and Navy and
13 all the research you had done. And you testified that a lot
14 -- I think you were talking about your writing or your
15 researching was a hobby of yours. Is that correct?

16 A Yes, sir. It's part of my identity as a scientist,
17 but I also enjoy it for its own sake.

18 THE COURT: Dr. Cunningham, why don't you just answer
19 yes or no to the questions. If you can't answer the question
20 yes or no, just say that you can't. The burden will be on the
21 attorney to ask questions that you can answer yes or no. He
22 asked you if you said something about a hobby. And the answer
23 to that is, "Yes, I said that," or "No, I did not say that."
24 There was no need for anything further.

25 Go on, Mr. Poole.

1 (Off-the-record discussion.)

2 BY MR. POOLE:

3 Q So your researching and writing are a hobby in that
4 your testimony was you were not compensated for them. Is that
5 correct?

6 A That's correct.

7 Q You are, however, compensated for work like you've
8 done today, coming in, testifying, researching a defendant,
9 things of that nature. Is that correct?

10 A Yes, sir.

11 Q How much are you paid per hour for this type of
12 work, sir?

13 A My fee is \$300 per hour.

14 Q Okay. How many hours have you spent on this case?

15 A Approximately 100.

16 Q So how much money have you made on this case?

17 A The total billings are about \$30,000.

18 Q Okay. And this is-- You do this type of work, you
19 come, you testify in these types of cases all over the
20 country. Is that correct?

21 A Yes, sir.

22 Q About how many times do you do that a year; do you
23 know?

24 A It varies by year. About 15 or so times a year.

25 Q How many times have you testified in a capital case

1 in your career?

2 A Approximately 135 times.

3 Q And in those 135 times, you've never testified on
4 behalf of the state or on behalf of the prosecution. Is that
5 correct?

6 A I can't answer that question the way it's phrased.

7 Q You have always been called by the defense, have you
8 not, in those 135 cases?

9 A Yes, sir, that's correct.

10 Q Do you still see patients, sir?

11 A No, sir.

12 Q So 100 percent of your income is derived from this
13 type of work. Is that correct? Is that fair?

14 A I can't answer that question the way it's phrased.

15 Q All right. What percentage of your income is --

16 THE COURT: You can ask him is it more than
17 90 percent, more than 80 percent, instead of asking him to
18 answer the question --

19 BY MR. POOLE:

20 Q Is your income -- is the percentage of your income
21 for work like this where you've made \$30,000 on this case,
22 approximately, work like this, is that more than 90 percent of
23 your income?

24 A All of my practice is court-related. Not all of it
25 is in capital cases, but all of it is court-related.

1 Q You formerly saw patients, did you not?

2 A Yes, sir.

3 Q And when you saw patients, I assume that you
4 actually met with the patients and talked to them about their
5 background, about whatever problems they were having. Is that
6 correct?

7 A Yes, sir.

8 Q You did not, in this case, however, talk to the
9 defendant. Is that correct?

10 A That's correct.

11 Q You base your testimony on interviews of his family
12 and friends and loved ones. Is that correct?

13 A In part, yes.

14 Q You never met with the defendant in the several
15 years you've been hired in this case. Is that correct?

16 A No, sir, I did not.

17 Q You did talk with his mother, Ms. Reba Taylor. Is
18 that correct?

19 A Yes, sir.

20 Q And you testified about the fact that the defendant
21 was actually conceived while his dad was on escape status. Is
22 that correct?

23 A Yes, sir.

24 Q And you got that information, I assume, from
25 Ms. Reba Taylor as well as interviews with Johnny Taylor, his

1 dad. Is that correct?

2 A Yes, sir.

3 Q And you testified that Ms. Reba Taylor helped
4 Mr. Johnny Taylor escape. Is that correct? Or harbored him,
5 or something of that nature. Is that correct?

6 A She was harboring him, and she also received a
7 probated sentence for trying to prepare some sort of false ID
8 for him while he was in prison.

9 Q Okay. And you also testified -- you were talking
10 about the eerie similarities, I believe, between Mr. Johnny
11 Taylor and Mr. -- and the defendant here, Mr. Rejon Taylor?

12 A Yes, sir.

13 Q And you talked about how they each had committed a
14 murder at a young age, correct?

15 A Yes, sir.

16 Q And Mr. Johnny Taylor had escaped. Mr. Rejon Taylor
17 attempted to escape relatively shortly thereafter. Is that
18 correct? Similar pattern. Is that correct?

19 A Similar patterns.

20 Q Okay. Did Ms. Reba Taylor also tell you that she
21 attempted to help Mr. Rejon Taylor escape?

22 A I did not question her about that. I saw that in
23 the records, but I did not question her about that.

24 Q Okay. You talked a little bit about frontal lobe
25 development and how at the age of 18 or 19 the frontal lobe is

1 not necessarily fully developed. Is that correct?

2 A That's correct.

3 Q And it develops, I guess, over time. Is that
4 correct? I mean, as you get older it becomes more fully
5 developed. Is that fair?

6 A That's fair.

7 Q Based-- And I assume your assumption is that 18- or
8 19-year-olds don't always -- based on this frontal lobe
9 development, don't always make the best decisions. Is that
10 correct? Is that the point of that?

11 A They are vulnerable to bad decisions and bad
12 judgment as a result of their immature brain development.

13 Q Based on that, would a 21- or 22-year-old be less
14 vulnerable to bad decisions than an 18-year-old, based on
15 frontal lobe development?

16 A Generally, yes.

17 MR. POOLE: Just one second, please, Your Honor.

18 (Off-the-record discussion.)

19 MR. POOLE: No further questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. LEE ORTWEIN:

23 Q Dr. Cunningham, you've never been called by the
24 prosecution to testify for them?

25 A No, sir, that's not correct. I've been called on

1 many occasions by the state. I've never been called by the
2 state in a capital case.

3 Q Okay. So you have testified for prosecutors before,
4 against criminal defendants?

5 A Yes, sir. I never testify for anybody. But I have
6 been called by the state.

7 Q Okay. Well, let's talk about that for a second.
8 You don't testify for anyone, do you?

9 A That's correct.

10 Q Okay. No matter how much you were to get paid, your
11 testimony would be whatever the truth is. Is that not
12 correct?

13 A Yes, sir. I'm paid for my time.

14 Q Okay.

15 A My findings and opinions are not for sale.

16 Q Okay. And obviously if you testified to something
17 that wasn't true, and it was proven not to be true, what would
18 that mean for your career?

19 THE COURT: That's not an appropriate question.

20 MR. LEE ORTWEIN: I'm sorry?

21 THE COURT: Ask another question.

22 MR. LEE ORTWEIN: If the Court could explain to me
23 why that's not appropriate.

24 THE COURT: Do you have any other questions? Are you
25 done with this witness?

1 MR. LEE ORTWEIN: I have more questions.

2 THE COURT: Well, go on, then.

3 BY MR. LEE ORTWEIN:

4 Q You testified that you were -- you're paid \$300 an
5 hour?

6 A Yes, sir.

7 Q Okay. And what's the standard rate for a
8 professional like yourself?

9 A That's on the low end of the scale for psychologists
10 and psychiatrists that testify on a national basis. Most of
11 the colleagues that I'm familiar with who have that kind of
12 practice are charging from 400 to 600 an hour.

13 Q Okay. So your rate's lower than the typical rate,
14 correct?

15 A Yes, sir, for psychologists that are testifying --
16 are working on a national basis.

17 Q Okay. And when you are retained for a case like
18 this, you are actually -- you have to get approval of the
19 court, do you not?

20 A Yes, sir.

21 Q Okay.

22 THE COURT: Counsel?

23 MR. LEE ORTWEIN: I'm sorry?

24 THE COURT: That's-- I'm not sure what you meant by
25 that.

1 Ladies and gentlemen, I'm not sure what Mr. Ortwein
2 meant. I'm quite sure that his question was asked in good
3 faith and the answer was answered in good faith. But this
4 Court had absolutely no involvement at all in approving any
5 witnesses in this case. That is not the role of the Court,
6 and the Court would never do that. This is the first time the
7 Court has ever seen this witness, when he testified, I guess
8 it was on Wednesday of last week. And if I even was aware of
9 his name before that, it may have been because of some
10 documents that the lawyers have filed. But this Court has not
11 approved or authorized any witness at all.

12 Counsel.

13 MR. LEE ORTWEIN: Yes, sir.

14 BY MR. LEE ORTWEIN:

15 Q Explain to us how you get paid.

16 A I submit detailed billings that describe the date
17 and specific amount of time and activities that I was involved
18 in in creating that billing. Those are created on a daily
19 basis and summarized into invoices monthly. That's attached
20 to what's called a CJA 31 form, which is a form that is then
21 filed with the attorneys, who sign off on it, who then file it
22 with the Court, who then signs off on a thing, they send it up
23 to the circuit court. But that's how the billings are
24 approved and ultimately paid.

25 Q Okay. So when you get a check, it's from the

1 government; it's not from the defense lawyers?

2 A That's correct.

3 MR. LEE ORTWEIN: Okay. That's all.

4 Thank you, Judge.

5 THE COURT: Thank you, Dr. Cunningham.

6 THE WITNESS: Thank you, sir.

7 THE COURT: You may step down.

8 (Witness excused.)

9 THE COURT: Call your next witness.

10 MR. WILLIAM ORTWEIN: Please the Court, the defense
11 rests.

12 THE COURT: Ladies and gentlemen, you've just heard
13 Mr. Ortwein indicate that the defense rests. That means that
14 the defense has presented all of the information it cares to in
15 this phase of the case.

16 Mr. Poole, Mr. Neff, will there be any rebuttal
17 evidence?

18 MR. POOLE: Yes, sir. We have one witness, Your
19 Honor, in rebuttal—Special Agent Melia.

20 (Brief pause.)

21 MR. POOLE: Judge, can we do something with this
22 screen?

23 THE COURT: Yes.

24 MR. WILLIAM ORTWEIN: Your Honor, before they offer
25 evidence, I have a motion in limine.

1 THE COURT: Okay. Ladies and gentlemen, let me have
2 you step outside, please.

3 (The jury exited the courtroom, and the proceedings
4 continued as follows:)

5 (Brief pause.)

6 THE COURT: Counsel?

7 MR. WILLIAM ORTWEIN: If it please the Court,
8 Mr. Poole has just briefly, I think, attempted to show me what
9 they were intending to introduce. I was going to make a motion
10 in limine, since the defense has not offered any evidence of
11 the lack of remorse, that the government be prevented, in its
12 rebuttal, from introducing any evidence of lack of remorse.
13 Also, if the government intends -- and I don't know that they
14 do, Judge. I'm not quite sure what they're going to introduce,
15 candidly, or attempt to introduce. Any evidence-- There's a
16 letter, I think, or statement about Mr. Taylor saying he would
17 like to go to Colorado because of the facilities there. I
18 would move that -- to exclude that from the government's
19 evidence, as Your Honor excluded specific security matters
20 relative to specific federal institutions.

21 And I think, Judge, and I'm not sure, from just a
22 brief conversation with Mr. Poole, and I don't recall the
23 contents of it at this point, that they intend to, at this
24 time, attempt to introduce a statement, I believe, from--

25 Mr. Poole, if I'm wrong --

1 MR. POOLE: I'll be glad to talk to the --

2 MR. WILLIAM ORTWEIN: -- Sir Jack, Sir Jack Matthews
3 made. And to be candid with the Court, I don't remember what
4 that conversation was, we've had so much evidence. But
5 Mr. Poole graciously said that he would bring it up before he
6 attempted to introduce it to the jury.

7 THE COURT: Okay. Let's take them up one at a time.
8 The first one was remorse. As I recall, the information
9 presented by the defense consisted of a number of witnesses who
10 were friends or relatives of the defendant who talked about his
11 upbringing and his life, then we had --

12 MR. LEE ORTWEIN: There you go.

13 THE COURT: -- testimony from Lieutenant Coppinger
14 who talked about his adjustment at the jail while he's been in,
15 there was a prison chaplain who talked about the same thing
16 from a different aspect, then we had testimony from Mr. Aiken
17 and we had testimony from Dr. Cunningham. I don't recall that
18 in any of that information anybody made statements regarding
19 the defendant being remorseful. So I don't know if there is
20 anything to rebut on that. I may be missing something. It's
21 been a while.

22 MR. POOLE: Judge, my understanding was-- I think
23 you're right about the evidence offered. But my
24 understanding—might be wrong—on the Court's order with regard
25 to the defendant being allowed to allocute was that we could

1 rebut the defendant's statements.

2 THE COURT: Yes.

3 MR. POOLE: And --

4 THE COURT: But I don't know that he --

5 MR. NEFF: He didn't say he was sorry.

6 THE COURT: I don't know that he said anything in his
7 statement, though, about being remorseful.

8 MR. POOLE: Well, no, Judge, he didn't, really, but
9 he did say that he "never knew so many people could be hurt by
10 such a costly mistake. It's just the pain and hurt I caused
11 Mr. Luck's family, my family. Just facing this every day, it
12 was -- really, really hurt, it hurt a lot." He talked about he
13 was thinking about committing suicide when he was talking about
14 this. I think it's arguably-- I'm going to argue to the jury
15 he hasn't shown any remorse. But maybe this is, arguably, an
16 attempt he was talking about remorse, Judge.

17 THE COURT: I don't think what he was doing is saying
18 anything at all about remorse. If you think you have some
19 evidence that rebuts that particular statement, I think you
20 would be entitled to offer that. I'm not sure that what he was
21 saying indicates lack of remorse. I think what you want to do
22 is show he said X and you've got information that contradicts
23 X.

24 MR. POOLE: Well, that's correct, Judge. What we're
25 talking about is something that the Court allowed in on the

1 case in chief but we didn't put it in on the case in chief.
2 And I understand that was at our own peril. The fact he says,
3 "the pain, and facing that every day, it was really, really
4 hard," I think the phone call where he laughs about Mr. Luck's
5 fiancée in response to the person on the other end of the phone
6 talking about her testimony does rebut that. That's why we
7 would like to call-- With regard to rebutting the fact that
8 he's saying it's really hard thinking about the pain he's
9 caused Mr. Luck's family, we've got a phone call where he's
10 laughing about that. I think that does directly rebut whether
11 it's an attempt at remorse or just a statement. I think that
12 would be relevant. And we would like to --

13 THE COURT: I think that would be admissible. I
14 don't see anything, though, even taking into account
15 Mr. Taylor's statements, that, in my mind, goes to remorse. So
16 I think Mr. Ortwein's objection, then, is well-taken, and the
17 Court will sustain any information that would demonstrate a
18 lack of remorse.

19 MR. POOLE: That --

20 THE COURT: What was the other thing Mr. Ortwein
21 said?

22 MR. WILLIAM ORTWEIN: First, I don't know if they're
23 going to offer it. Let me say this. But there is somewhere
24 within either a phone call or a letter wherein Mr. Taylor says
25 he would like to go to the Colorado penitentiary because --

1 THE COURT: Mr. Poole, why would you want to put that
2 in?

3 MR. WILLIAM ORTWEIN: Sir?

4 THE COURT: I'm asking Mr. Poole why in the world
5 would he want to put that in.

6 MR. WILLIAM ORTWEIN: I don't know that he does,
7 Judge. I just was --

8 THE COURT: You don't?

9 MR. POOLE: We're not going to talk about Colorado or
10 any other --

11 THE COURT: Okay. That takes care of that, then.

12 MR. POOLE: But, but, he does say he can't wait to
13 get to the penitentiary to get access to a computer.

14 MR. WILLIAM ORTWEIN: Yes, sir. And my point about
15 that-- That is the Colorado statement.

16 MR. POOLE: But we aren't going to talk about
17 Colorado specifically.

18 MR. WILLIAM ORTWEIN: May it please the Court, since
19 Your Honor limited us and would not allow us to introduce
20 specific evidence like life in the day in a prison and other
21 matters, we don't think there is anything there to rebut. Now,
22 had Your Honor ruled differently in regard to Mr. Aiken's
23 testimony, possibly that could be introduced, I would agree.
24 But since Your Honor specifically ruled that type information
25 out of evidence, there is nothing there to rebut by that

1 statement, either.

2 THE COURT: What does that rebut, Mr. Poole?

3 MR. POOLE: Judge, I think that they did rebut the
4 future dangerousness allegation. I think Mr. Aiken did talk
5 about the increased security in the BOP. He didn't talk about
6 a specific one. He even said, "I can't go into detail." But
7 he did talk about how what was going on at Hamilton County Jail
8 couldn't happen in the BOP, and that the BOP is much more
9 secure and therefore any kind of threat that the defendant
10 might cause would be less. I think the defendant talking
11 about-- You know, our theory all along, Judge, the defendant
12 by himself is not physically imposing or a danger, but he is a
13 danger in that he can influence people, and he's a danger with
14 computers, quite frankly.

15 THE COURT: Again, what does it rebut, though? There
16 has to be --

17 MR. POOLE: I think it rebuts Mr. Aiken's statement
18 that the security at the BOP is such that -- you know, I think
19 the implication was that the defendant would not be able to be
20 any kind of danger because the security --

21 THE COURT: I don't think Mr. Aiken testified to
22 that. I know he was not authorized to say that. What he was
23 authorized to testify to was that the defendant would be
24 transferred to a Bureau of Prisons facility and at that
25 facility there would be better security than there was at the

1 Hamilton County Jail.

2 MR. POOLE: That's correct. We will not --

3 THE COURT: He did testify to more than that, but
4 that was not authorized by the Court. And I don't recall
5 whether he actually talked about in any detail what the
6 particular security features were going to be. I don't see a
7 direct connection there.

8 MR. POOLE: Judge, my first point, I guess, would be,
9 I think you're right, the Court did not authorize that type of
10 testimony. I think he did testify-- He didn't testify
11 specifically about what -- whether they had a computer or TV or
12 anything of that nature. He testified about the procedures the
13 BOP uses, somewhat, however. He talked about-- Whether the
14 Court authorized it or not, the jury heard it. He talked about
15 always a gun on the defendant. He talked about the SHU. He
16 talked about levels of security. He'd say, "I don't want to go
17 into too much detail on plans," to rebut this. But he did talk
18 about BOP. But, Your Honor, he did not talk about what they
19 would or would not have access to, if that's Your Honor's
20 point. So I understand that.

21 THE COURT: I'll grant Mr. Ortwein's motion on that,
22 then.

23 MR. POOLE: I understand that, Judge.

24 THE COURT: Was there something --

25 MR. WILLIAM ORTWEIN: There was some letter -- I

1 don't -- Judge, to be candid, I don't remember, Judge, if they
2 want to introduce, that we objected to once before, that
3 Mr. Poole -- and that Your Honor disallowed relative to certain
4 -- maybe it was a communication from Sir Jack Matthews.

5 MR. POOLE: I'll be glad to tell the Court, just lay
6 out --

7 MR. WILLIAM ORTWEIN: Would you please, because I'm
8 not sure what it is.

9 THE COURT: Let's just focus on the Sir Jack.

10 MR. POOLE: Yes, sir. Yes, sir. Judge, there is
11 a -- two phone calls that we would like to play, one of
12 which --

13 THE COURT: I think Mr. Ortwein was just talking
14 about a letter, not phone calls.

15 MR. WILLIAM ORTWEIN: Have --

16 MR. POOLE: I showed him a transcript. I think he
17 thought it was a letter.

18 MR. WILLIAM ORTWEIN: Between phone calls and
19 letters...

20 THE COURT: So it may be a phone call.

21 MR. WILLIAM ORTWEIN: Whatever it is he's trying to
22 introduce, Judge, I'm again' it. I'll figure out a reason once
23 I hear what it is, but I'm again' it.

24 MR. POOLE: What it is is a phone call. I believe
25 Your Honor has now said we can play a phone call where the

1 defendant is talking about -- he's laughing about the victim's
2 fiancée. He talks about, in that phone call, how -- he's
3 talking about how Sir Jack is going to testify the next day.

4 We have a phone call from a few days before that,
5 August 26, 2008, where Sir Jack Matthews is on the phone, he's
6 calling the same number as the defendant, and he's talking
7 about how it's going to come out Wednesday, which is when he
8 testified, how he's -- Rejon's going to go to trial before
9 him, "I'm going to go there and testify on his behalf or
10 whatever. After his trial, that's when I go. I go after
11 him." And he talks about, "That's how it works. We're
12 banking on this."

13 He's basically saying he's going to get Rejon off
14 and Rejon can do the same for him, they'll be out of the Fed
15 system. We think that's important. The defense did put on
16 proof in their case about Sir Jack Matthews' arrest and school
17 background and things of this nature. One of the arguments
18 they're making is, comparably to the defendant, he's not
19 facing the death penalty and he's a worse guy.

20 Now, I think our evidence is relevant for a couple
21 of purposes. Number 1, when they're talking about how bad a
22 guy he is, I think it's relevant to show that he was working
23 with the defendant as late as during this trial, that they
24 have a plan to perpetrate a fraud on this Court. I think that
25 it is also relevant to show -- and there is a letter that we

1 aren't going to put in but we were going to ask Special Agent
2 Melia about where Mr. Taylor also says Sir Jack Matthews has
3 plans to withdraw from his plea agreement. So that combined
4 with the phone call, I think, undercuts their argument that,
5 "Well, we know Sir Jack Matthews is going to get life in
6 prison, and he's just as bad as Rejon Taylor."

7 His plan, the defendant's plan, along with Sir Jack
8 Matthews, is to try and get out of this plea. We may well
9 object to that; I don't know, Judge. But his plan is to try
10 to get out of his plea, and that's in a letter and, you know,
11 talked about in the phone call. So I think that's relevant,
12 that we don't know necessarily what's going to happen to Sir
13 Jack Matthews after he perjured himself. And their plan
14 together, their conspiracy, is, Sir Jack Matthews to try to
15 get out of his plea agreement and try and beat this case like
16 he tried to beat -- you know, Mr. Taylor tried to beat the
17 case. So we would like to offer the phone call where Sir Jack
18 is kind of talking to his girlfriend, he's talking about how
19 he's going to get Rejon off and they'll do the same thing for
20 him and they'll move on to state court together, and a
21 reference to a letter from Special Agent Melia where he'll say
22 Rejon Taylor actually wrote that Sir Jack is going to try to
23 get out of his plea agreement. That's what we would like to
24 offer in terms of Sir Jack Matthews.

25 MR. WILLIAM ORTWEIN: Judge, I'm going to make one

1 statement, then I'm going to turn it over to my legal person,
2 Ms. Cory. As there was no evidence introduced in our proof in
3 chief to rebut or show that there was no collusion over this
4 statement between Sir Jack Matthews and our client, there is
5 nothing to rebut by introducing those particular letters at
6 this particular time. The government had an opportunity to try
7 to put them in their proof in chief, but they chose to wait and
8 to determine what the defense did. The defense did not
9 introduce any evidence whatsoever to show that there was no
10 collusion; we didn't attempt to, by any witness. This being
11 rebuttal, if it please the Court, there being nothing for them
12 to rebut, the Court should exclude it.

13 THE COURT: Ms. Cory?

14 MS. CORY: Your Honor, I really have very little to
15 add to that. We did have a great deal of argument on this when
16 the letters in the case originally came up. Your Honor ruled
17 that they could not admit any of that evidence during their
18 case in chief. And as Mr. Ortwein indicated, we have not
19 presented any evidence during our mitigation evidence that
20 brought that up. So they have nothing to rebut.

21 THE COURT: There was, I believe, a stipulation, and
22 there may have been some evidence along these lines, too,
23 involving Sir Jack Matthews' pretty horrible school record, and
24 there was some testimony involving his arrest for statutory
25 rape, I believe of a 12-year-old young lady, and that the

1 mother and the child were fearful of Mr. Matthews. And I do
2 recall that there were some statements made that Sir Jack
3 Matthews was going to receive a life sentence and would not be
4 exposed to the death penalty, but I don't know that there was
5 any evidence of that. Was there any evidence of that?

6 MR. WILLIAM ORTWEIN: That was in the plea agreement.

7 MR. POOLE: Judge, his original plea agreement is in
8 evidence. So that would be the only-- Of course it also says
9 that he cannot withdraw. Of course his plea agreement was in
10 evidence. I assume that's what they were talking about, and we
11 would like to argue in closing.

12 THE COURT: Was it put in evidence during the
13 sentencing phase by the defense?

14 MR. WILLIAM ORTWEIN: No, Your Honor.

15 MS. CORY: No, Your Honor.

16 THE COURT: What we're talking about is rebuttal.
17 We're not talking about anything that's in evidence. We're
18 talking about rebutting anything put in by the defense in this
19 phase of the case. So am I correct, then, that there has been
20 no evidence or information presented to the jury during the
21 defense phase of the case that Sir Jack Matthews will receive a
22 life sentence and will not be exposed to the death penalty?

23 MS. CORY: That's correct, Your Honor.

24 THE COURT: Okay. I don't think, then, you have a
25 right to rebut with evidence, then, the idea that Sir Jack

1 Matthews is going to only receive a life sentence. I think
2 what happened was, that was argument. And you can respond to
3 that in argument, that if that comes up, the argument would be
4 that there has been no evidence at all presented that's going
5 to happen to Sir Jack; nobody knows.

6 MR. POOLE: That's true, Judge, but that's submitted
7 as a mitigating factor. You know, the plea agreement does say
8 that. It wasn't-- We were not allowed to put this in in the
9 case in chief, so we couldn't rebut the proof that was already
10 in from the guilt/innocence phase. They're arguing it.
11 They're putting on more proof with regard to that argument
12 about how bad a guy Sir Jack is. This is our only chance to
13 rebut that. If we can't rebut it, I don't think we ought to be
14 allowed to argue it.

15 THE COURT: They may not. If there is no evidence to
16 support it, they should not argue things with respect to which
17 there is no evidence. With respect to the school records and
18 the arrest, I think the government does have a right to rebut
19 that. I think this evidence would tend to show that
20 Mr. Matthews is a pretty disgusting and disreputable person,
21 but the evidence of an association between -- a voluntary
22 association between the defendant and Mr. Matthews, I think,
23 would tend to rebut that. So to the extent that the government
24 wishes to offer evidence of ongoing communications and ongoing
25 communications and plans and agreements, I think that would be

1 proper rebuttal.

2 MR. POOLE: Thank you.

3 MS. CORY: Your Honor, one of our problems with the
4 specific letters they're talking about and specific phone call
5 is, what Rejon Taylor hopes will happen and what Sir Jack
6 Matthews hopes will happen is absolutely irrelevant to what is
7 actually going to happen in a court of law. They are
8 uneducated in this regard. For the government to put before
9 the jury statements they make as though they can anticipate
10 what's going to happen in court, I think, gives their comments
11 far more credence than is realistically appropriate.

12 THE COURT: Well, the government is entitled to
13 respond to information and evidence. And as the Court has
14 stated, there was evidence concerning Sir Jack Matthews. And
15 the Court thinks from what the Court has heard that this would
16 be a fair -- fair rebuttal. So the Court will allow the
17 government to present this.

18 MS. CORY: So will their rebuttal evidence be
19 testimony by Mr. Melia that Sir Jack Matthews used a phone line
20 that was paid for by the defendant's sister, or --

21 THE COURT: That's the first-- I don't know. That's
22 the first I've heard of that.

23 MS. CORY: Well, I'm not sure what his testimony is
24 going to be, Your Honor, to rebut.

25 THE COURT: Counsel is not required to and counsel

1 has not given me a preview of what evidence they intend to put
2 on.

3 MS. CORY: I think I've heard Your Honor say that
4 before.

5 MR. POOLE: I think -- I don't want to give a
6 preview, but I think basically we're going to play the phone
7 call, talk about their association, reference the letter, and
8 play the other phone call with the laughter Your Honor is aware
9 of. I think that's all we're going to do, Judge.

10 THE COURT: I think what Ms. Cory was asking
11 specifically, were you going to put in evidence that Sir Jack
12 Matthews was not paying for these telephone calls but, rather,
13 it was a relative of the defendant that was paying for them?

14 MR. POOLE: I think we would, yes. I mean, I wasn't
15 really going to focus on who was paying for it, but it
16 certainly is part of the association. Special Agent Melia will
17 talk about the fact that Sir Jack is using the defendant's
18 phone number. I don't think there is any doubt about that.

19 MS. CORY: I think that's it for us, Your Honor.

20 THE COURT: Okay. Let's bring the jury back.

21 (The jury entered the courtroom, and the proceedings
22 continued as follows:)

23 THE COURT: Please be seated.

24 MR. POOLE: Special Agent Jim Melia.

25 (Brief pause.)

1 JAMES J. MELIA,
2 recalled as a witness at the instance of the government,
3 having been previously duly sworn, was examined, and
4 testified as follows:

DIRECT EXAMINATION

6 BY MR. POOLE:

7 Q This is the third time you've testified. So I think
8 the jury knows who you are. But you are still Special Agent
9 Jim Melia. Is that correct?

10 A That's true.

11 Q And you've talked about, in this case, after Sir
12 Jack Matthews testified, that you took about an investigation
13 regarding his testimony and the relationship between he and
14 the defendant. Is that right?

15 A I did.

16 Q And you've testified before about one of the things
17 you did was, had the Hamilton County Jail start getting phone
18 calls that the defendant made, and you listened to many of
19 those calls. Is that right?

20 A That's right.

21 Q Remind the jury, how was it that the specific calls
22 that were pulled were chosen; was it based on the defendant's
23 name, or how did we get the calls that we got; what did they
24 use?

25 A There's a couple of different ways that the jail can

1 pull phone records or phone calls for us. Each prisoner is
2 assigned what they call a spin number, SPN number, and they're
3 required to punch that number in before they make a telephone
4 call. So oftentimes we use that number to pull calls. But
5 many times prisoners won't use their own spin number, and in
6 that case, if we know there is a common number that's dialed,
7 we just ask that all the phone calls placed to a particular
8 phone number be pulled for us and provided to us.

9 Q Is that-- Was this done in this case? A particular
10 number was identified?

11 A Right. I think it's (423) xxx-xxxx. I believe
12 that's the correct phone number.

13 Q And that is a Chattanooga number, I guess, 423. Is
14 that right?

15 A It is. It's a cellular telephone.

16 Q Do you know who holds that cellular telephone, who
17 has it?

18 A I believe the phone number is subscribed to either
19 by -- I think it's by Eva Williams, who is Rejon Taylor's
20 grandmother.

21 Q Okay. And Mr. Taylor made several calls on this
22 number. Is that correct?

23 A I think I testified before the number is somewhere
24 around 10,000 phone calls from the Hamilton County Jail,
25 placed during the time that Mr. Taylor's been incarcerated

1 over there.

2 Q And another thing you did based on listening to many
3 of these calls, was, you started pulling letters that the
4 defendant wrote to someone at Silverdale. Is that right? The
5 workhouse. Is that correct?

6 A Right. We kind of did that on the other end. We
7 asked Silverdale to screen the mail being provided to a
8 particular inmate over there. And those letters were provided
9 to us by the investigative personnel at Silverdale.

10 Q Based on reviewing those letters-- I assume you
11 didn't review all over 10,000 calls, but during your review of
12 the calls, can you tell the jury about any ongoing association
13 between the defendant and Sir Jack Matthews?

14 A Yes. I can tell you that both the defendant and Sir
15 Jack Matthews regularly place telephone calls to that number.
16 Sir Jack Matthews will talk to Taylor's family, and he'll also
17 dial that number, get connected to Taylor's family, and then
18 he'll ask to be connected to his own family members or to a
19 girlfriend. But he uses that -- pretty much uses that
20 telephone number as his own as a means to stay connected to
21 others. I've even got instances where Taylor and Matthews are
22 on the telephone with each other at the same time, connected
23 to that (423) xxx-xxxx number.

24 Q All right. And do you have calls or letters that
25 refer to any kind of plan between the defendant and Sir Jack

1 Matthews with respect to this case and specifically with
2 respect to this jury trial?

3 A Yes, I do.

4 Q Tell the jury about those, please.

5 A Telephone call, or letter?

6 Q Let's start with the telephone call.

7 A I do have --

8 MR. WILLIAM ORTWEIN: Objection. Best evidence would
9 be for him to play it.

10 MR. POOLE: I will be glad to do that, Judge. I've
11 got the transcripts here, and I will offer Government's Exhibit
12 S3 into evidence and S3A for identification, which is the
13 transcript, into evidence, Your Honor.

14 THE COURT: They're received.

15 (Government's Exhibit S3 was received into
16 evidence.)

17 (Government's Exhibit S3A was received for
18 identification only.)

19 MR. WILLIAM ORTWEIN: Of course, Your Honor, I don't
20 know that it's necessary, but I will preserve our objection to
21 these, both of these items, for purposes of the record.

22 THE COURT: The Court notes that this is coming in
23 over objection. That objection is preserved.

24 MR. WILLIAM ORTWEIN: In addition, I believe there is
25 another document or telephone call. Both of them we would like

1 to preserve the objection on.

2 THE COURT: That objection is noted, will be
3 preserved.

4 MR. POOLE: Thank you. Publish to the jury, please,
5 that call.

6 (The tape was played in open court, and the
7 proceedings continued as follows:)

8 BY MR. POOLE:

9 Q Do you know when that call was made?

10 A August 26, 2008, at 8:20 p.m.

11 Q Okay. And that was the day, or day after, we
12 started trial in this case. Is that correct?

13 MR. WILLIAM ORTWEIN: Objection. Leading.

14 BY MR. POOLE:

15 Q Was it-- Do you know when in reference to when this
16 trial started it was?

17 A I think the start date of the trial was August 25th.

18 Q You also pulled a call from the defendant during
19 this time frame, related to this, did you not?

20 A Many of them.

21 MR. POOLE: Okay. I'm going to just go ahead
22 and play Government's Exhibit S4. S4A is for identification,
23 Judge, a transcript. We'll ask to submit that. It's a phone
24 call of the defendant. S4 is the CD, Judge. S4A is the
25 transcript.

1 THE COURT: Received.

2 MR. POOLE: Thank you.

3 Play the tape, please.

4 (Government's Exhibit S4 was received into
5 evidence.)

6 (Government's Exhibit S4A was received for
7 identification only.)

8 MR. POOLE: Pass the transcripts up.

9 (Brief pause.)

10 (The tape was played in open court, and the
11 proceedings continued as follows:)

12 MR. WILLIAM ORTWEIN: Your Honor, I hate to
13 interrupt, but at this point --

14 THE COURT: Mr. Poole, could you pause it, please?

15 MR. POOLE: Yes, sir.

16 (Brief pause.)

17 MR. POOLE: It's paused.

18 MR. WILLIAM ORTWEIN: I believe Your Honor just ruled
19 out part of this phone call. And I don't want to-- Maybe
20 counsel for the government wants to redact.

21 THE COURT: Would you point it out to him? You can
22 just stand beside him and point it out.

23 MR. WILLIAM ORTWEIN: If I may confer with the
24 government.

25 (Off-the-record discussion.)

1 MR. WILLIAM ORTWEIN: Your Honor, there is a matter,
2 if I could ask the Court --

3 THE COURT: Just point it out to him, and he may
4 agree to it.

5 MR. POOLE: I don't agree to it. My recollection was
6 that Your Honor said we could play that portion, Judge. He can
7 pass it up.

8 MR. WILLIAM ORTWEIN: I can pass it up, mark it, show
9 it to the Court, and the Court can rule from the bench if you
10 like. Might be the easiest way to do it.

11 (Brief pause.)

12 MR. WILLIAM ORTWEIN: Our objection dealt with
13 remorse, Judge, on rebuttal. And I would say the jurors have
14 transcripts of it at this point in time, of evidence Your Honor
15 has ruled inadmissible.

16 (Brief pause.)

17 MR. POOLE: Judge, my recollection was that the Court
18 ruled it was admissible specifically to rebut a portion of the
19 defendant's allocution.

20 MR. WILLIAM ORTWEIN: Your Honor, that's a
21 lack-of-remorse rebuttal, we submit, which Your Honor said the
22 government could not introduce in rebuttal.

23 MR. POOLE: It's to rebut his statements about the
24 victim's family, specific statements.

25 MR. WILLIAM ORTWEIN: Your Honor said-- I'm sorry.

1 I just remember the Court's ruling a little different than the
2 government.

3 THE COURT: What the Court indicated was that -- and
4 I'm not going to mention the word, but the word that you
5 indicated was out of bounds, but the government would have the
6 right to respond to anything that actually came in as evidence
7 or information. And the Court is looking at Page 3, about
8 midway down, and there is a statement by Tameka and response by
9 the defendant. I have not heard this, but if the transcript is
10 correct, the Court finds that this is a direct relationship to
11 statements made by -- by the defendant.

12 MR. WILLIAM ORTWEIN: Even though Your Honor ruled --
13 told the jury that statements made by the defendant was not
14 evidence?

15 THE COURT: Yes. As I --

16 MR. WILLIAM ORTWEIN: They can rebut matters which
17 are not evidence?

18 THE COURT: As I understand the law in this area, and
19 there is not an awful lot of cases that authorize the Court to
20 do what the Court did, but if a defendant makes an unsworn
21 statement, that although the defendant is not subject to
22 cross-examination, the other side does have the right to rebut
23 what the person says.

24 MR. WILLIAM ORTWEIN: I'm sorry. I just
25 misunderstood your earlier ruling that in fact-- I have to

1 watch what I say in front of the jury.

2 THE COURT: Yes.

3 MR. WILLIAM ORTWEIN: -- in fact that Mr. Taylor's
4 allocution did not approach that subject, and therefore there
5 was nothing to rebut.

6 THE COURT: That is correct as a general statement,
7 that the government would not be allowed to introduce evidence
8 on that general subject. If there was some specific something
9 that they had contrary evidence on, they would be allowed to do
10 that. And that is the situation here, that there was something
11 specific said that the government can rebut. This is not the
12 general subject that we've been talking about, though.

13 MR. WILLIAM ORTWEIN: Okay. Like I say-- Well, in
14 the old school, I note the exception, Judge, but we don't do
15 that anymore.

16 Could I ask for my copy back, please, sir?

17 THE COURT: Ms. Palmer.

18 (Brief pause.)

19 MR. POOLE: May we play the tape, Judge?

20 THE COURT: Yes.

21 (The tape was played in open court, and the
22 proceedings continued as follows:)

23 BY MR. POOLE:

24 Q Special Agent Melia, when was this call?

25 A September 2nd, 2008.

1 Q And when was this in reference to Sir Jack Matthews'
2 testifying before this jury?

3 A Matthews testified the following day.

4 Q So when he's talking about "Everything's going to be
5 cleared up tomorrow," he's talking about "I'm waiting for
6 tomorrow," what's he talking about?

7 MR. WILLIAM ORTWEIN: Please the Court, the telephone
8 call speaks for itself without counsel trying to summarize and
9 make it into something else. The jury heard it.

10 THE COURT: Let's try to ask nonleading questions,
11 Mr. Poole, and then let's see if there is an objection to the
12 nonleading question.

13 BY MR. POOLE:

14 Q What was he talking about, Special Agent Melia?

15 MR. WILLIAM ORTWEIN: Objection to his opinion, if it
16 please the Court. He's an FBI agent who has testified to the
17 facts. Under case law he can now not turn into an expert to
18 interpret the language of other individuals and what they're
19 saying. That's about what he's attempting to do. He can't
20 testify as a fact witness and then an expert witness to
21 interpret conversations, both.

22 THE COURT: Mr. Poole?

23 MR. POOLE: I'll move on, Judge.

24 BY MR. POOLE:

25 Q On Page 3 of the transcript they're talking about

1 his dream. Do you know who they're talking about, just to put
2 it in context for the jury?

3 A Guy Luck's dream.

4 Q Okay. And on that same page, talking about "she met
5 him in 1989," do you know who "she" is?

6 A Stephanie Belcher.

7 Q And who is Stephanie Belcher?

8 A Mr. Luck's girlfriend, business partner.

9 MR. POOLE: No further questions. Judge.

10 THE COURT: Cross-examination?

11 MR. WILLIAM ORTWEIN: Your Honor, first of all, I
12 would like to request-- To me, there are some errors in this
13 transcript, especially parentheses about laughing. So I would
14 like to ask the Court to charge the jury that what they heard
15 on the tape or the disk was the actual evidence, and that the
16 transcript is not evidence.

17 MR. POOLE: No objection.

18 THE COURT: Okay. Ladies and gentlemen,
19 Mr. Ortwein's request that the Court instruct you is
20 appropriate. What has just been introduced to you as evidence
21 or information in this case is the tape recording itself. The
22 transcript that you were provided was just an aid to help you
23 understand the voices on the recording. If there is any
24 difference between what's in the transcript and what's in the
25 recording, ignore the transcript and go by what you heard in

1 the recording. And if there are some parts of the recording
2 that you cannot understand but there is something in the
3 transcript, then ignore the transcript and do not assume that
4 what's in the transcript actually relates what was -- what's in
5 the recording. Special Agent Melia was not a participant in
6 these conversations, so he's not able to fill in any blanks or
7 any gaps.

8 MR. WILLIAM ORTWEIN: Thank you, Your Honor.

CROSS-EXAMINATION

10 BY MR. WILLIAM ORTWEIN:

11 Q Just a couple of questions. Mr. Melia, how many
12 other people were using that phone number?

13 A I'm not sure. I think I've probably heard about
14 five different people use the phone number. There's-- I
15 don't have everybody who was using the phone number completely
16 identified, but there was a guy who just got convicted of
17 murder over in Red Bank who was using the telephone, that
18 telephone number. There were some gang guys that were using
19 that telephone number. I'm not sure who all of them are.

20 Q But it's fair to say that Rejon Taylor did not
21 exclusively grant Sir Jack Matthews the right to use that
22 telephone number?

23 A No, not exclusively. There's several people over at
24 the jail that are using that telephone number.

25 MR. WILLIAM ORTWEIN: All right, sir. That's all.

1 MR. POOLE: No further questions, Judge.

2 THE COURT: Thank you. You may step down.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 THE COURT: Call your next witness.

6 MR. POOLE: United States rests.

7 THE COURT: Ladies and gentlemen, you've heard

8 Mr. Poole state that the United States rests. That means that

9 the United States has completed its rebuttal evidence.

10 Mr. Ortwein, does the defense have any surrebuttal?

11 MR. WILLIAM ORTWEIN: No, Your Honor.

12 THE COURT: And you've heard that the defense also

13 has no surrebuttal. That means that all the information that

14 the parties care to present to you in this phase of the case

15 has now been presented to you.

16 The next step in the case is for the Court to have

17 the attorneys present their closing arguments to you, and then

18 for the Court to give you your instructions. The Court has

19 prepared draft instructions. The Court has provided those to

20 the attorneys, but it's necessary for the attorneys to --

21 it's necessary for the Court to go over those with the

22 attorneys. The Court has not had occasion to do that yet.

23 Why don't I let you go ahead and take your morning recess.

24 While you're out at recess, the Court will take this up with

25 the attorneys.

1 (The jury exited the courtroom, and the proceedings
2 continued as follows:)

3 THE COURT: Okay. Please be seated.

4 MR. WILLIAM ORTWEIN: Your Honor, if I may bring up
5 one other matter. We took up an objection in the presence of
6 the jury, was sort of cautious about the language. What I
7 would like to do is file the defense sentencing exhibit, not
8 for the jury, a transcript of that phone call where on Page 3 I
9 have marked -- where I marked and handed up to the Court to
10 show what my objection actually was to, so it will be clear in
11 the record, if I could.

12 THE COURT: Very well. The Court will accept that,
13 then, as another appellate exhibit. It will be the
14 next-numbered appellate exhibit.

15 MR. WILLIAM ORTWEIN: Yes, sir. I've got "AP" by it,
16 but I don't know the number.

17 THE CLERK: It will be S18.

18 MR. WILLIAM ORTWEIN: I'm sorry?

19 THE CLERK: S18.

20 (Defendant's Exhibit DS18 was received for
21 identification only.)

22 MR. WILLIAM ORTWEIN: Your Honor, I don't know what
23 time you want to take up closing arguments, but Mr. Cooper and
24 I need to, I guess, adjourn to the office, because I have over
25 there various copies of transcripts of testimony I intend to

1 use that I have not brought to the courtroom.

2 THE COURT: Okay. We do need to discuss the jury
3 instructions at some point. I take it that you-all received
4 those on Friday.

5 MR. WILLIAM ORTWEIN: Yes. Ms. Cory, obviously, is
6 in charge of that, Your Honor.

7 THE COURT: Do you want to do that now, or would you
8 like to do that at a later point, then? We do need to reach
9 some agreement on the instructions.

10 MR. WILLIAM ORTWEIN: However the Court desires to
11 proceed. I just wanted the Court to know that before closing
12 argument I do need to go back to the office to get copies of
13 the transcripts I've had blown up, et cetera, to bring back to
14 the court.

15 THE COURT: Okay. Mr. Neff, looks like we need to
16 take a break for Mr. Ortwein at any rate. Do you want to do
17 the charge conference now, or would you like to do the charge
18 conference a little bit later?

19 MR. NEFF: Well, Judge, I guess, if I had my
20 druthers, just do it now and get it done. If the defense wants
21 to wait, I don't have any problem with that.

22 MR. WILLIAM ORTWEIN: Ms. Cory?

23 MS. CORY: I don't have any problem.

24 MR. WILLIAM ORTWEIN: I just wanted to ask the Court
25 for permission to leave while that was going on.

1 THE COURT: Yes. Yes. You may do that.

2 Why don't we start with the government, then.

3 MR. NEFF: Do you want me to wait, Judge?

4 THE COURT: Yes. I need to get my copy.

5 MR. NEFF: I beg your pardon?

6 THE COURT: I do not have a copy.

7 (Brief pause.)

8 THE COURT: Okay. Mr. Neff?

9 MR. NEFF: Yes, sir.

10 THE COURT: You've had a chance to look at the
11 proposed charge?

12 MR. NEFF: I have, Your Honor.

13 THE COURT: Okay. Let's take up, then, the first
14 page as to which you have an objection or suggestion.

15 MR. NEFF: Okay. Your Honor, Page 5, the instruction
16 on the unsworn allocution, the Court says there that the
17 defendant has a right -- has an absolute right not to testify.
18 Obviously the unsworn allocution was not considered testimony.
19 We would ask that the Court say the defendant also has a right
20 to testify under oath, subject to cross-examination, as well as
21 the right not to testify. It was his choice to do this, and I
22 don't know that that's clear to the jury.

23 One of the things the defendant said in his
24 statement, in his allocution, at the end, which we're
25 concerned misleads the jury, he says, "I guess that's really

1 all I can -- all I really can say without just stepping over
2 my boundaries," makes it sound as if the Court would not
3 permit him to testify or-- Obviously he could have said
4 whatever he wanted to say, had he chosen to get up, be sworn
5 in, and testify subject to cross-examination. So we'd ask
6 that that additional language be placed in there as well.

7 THE COURT: Ms. Cory?

8 MS. CORY: Your Honor, we would strenuously object to
9 this being an either/or kind of instruction. One of our
10 requests is going to be that this whole bottom part of the
11 allocution instruction be moved to a separate instruction
12 regarding the defendant's right not to testify, because leaving
13 it here gives an implication that the Court is commenting on
14 his failure to testify. So we think the unsworn allocution
15 paragraph should stand alone, that there should be a separate
16 instruction just dealing with the defendant's right not to
17 testify. Your Honor is explaining to the jury the difference
18 between what the defendant is doing in allocution and what
19 evidence is. So we think the government's suggestion is
20 totally inappropriate.

21 THE COURT: So if we move it to another section and
22 then just talk about the defendant's right to testify, do you
23 have any objection, then, to changing the sentence that
24 Mr. Neff is speaking of to "A defendant has an absolute right
25 not to testify or to testify"?

1 MS. CORY: Your Honor, this is-- I think what Your
2 Honor has given here is the standard instruction that's given
3 when a defendant chooses not to testify. I don't think it
4 needs to be altered.

5 THE COURT: The situation, though, is not all that
6 typical. This is the first instance in a civilian court that a
7 defendant has given an unsworn statement. And I don't know how
8 realistic it is that the jury might think the defendant did not
9 have a right to testify; but to the extent that that's the
10 case, just including those additional three words would cure
11 that.

12 MS. CORY: Your Honor --

13 THE COURT: In most cases it's an either/or
14 situation; they either hear from the defendant or they don't
15 hear from the defendant. Here we're kind of betwixt and
16 between.

17 MS. CORY: Your Honor, if you're considering adding
18 that to this instruction as a separate instruction, I would
19 like to have the opportunity to talk to my client about whether
20 he would prefer just to waive the entire instruction about
21 right to testify or not testify.

22 THE COURT: Okay. Mr. Neff, you don't have a problem
23 with moving this last paragraph to a different location, do
24 you?

25 MR. NEFF: No-- Well, I-- No, but I actually think

1 it's where it makes the most sense, because, as the Court
2 pointed out, this is an unusual situation. There is obviously
3 an instruction on the fact the defendant decided to make an
4 unsworn allocution. And given the fact that it is unusual,
5 that this wasn't an either/or situation, as the Court put it,
6 and given the fact that the defendant in his own statement said
7 that he didn't want to step over his boundaries, our concern,
8 Judge, is that the jury is going to think that the Court
9 somehow limited him in what he could do or what he could say.

10 Now, within the context of the unsworn allocution,
11 obviously the Court did, but it does not account for his right
12 and ability to make the decision to get up and testify under
13 oath, subject to cross-examination. So I think it actually
14 makes the most sense to put it there. The defendant did not--
15 "The defendant has an absolute right not to testify, but he
16 also has the right to testify," and I think, accurately,
17 should say, "under oath, subject to cross-examination." We
18 don't need to highlight that he didn't make that choice, but I
19 think it's important to say what the options were.

20 THE COURT: But you don't have a serious problem,
21 then, with moving it someplace else? You think this is the
22 best place for it, but you don't have a serious problem with it
23 being placed somewhere else?

24 MR. NEFF: Well, Judge, if you're going to place it
25 somewhere else, I guess I would suggest putting it right after

1 this instruction. If the Court wants to do it in a separate
2 instruction, put it under the next page, maybe, Page 6, "The
3 defendant's right to testify," or "right not to testify," or
4 however the Court usually handles that. But I think it should
5 be in close proximity to this, because that's my concern, that
6 the jury is going to be misled.

7 THE COURT: The Court will give Ms. Cory a chance to
8 speak to Mr. Taylor about it, then, but the Court would be
9 inclined to just include the three words "or to testify" at the
10 end of the sentence that we're discussing. What's next?

11 MR. NEFF: Judge, Page 11, please. And-- Excuse me.
12 Losing my voice. In the -- I guess it's the second paragraph,
13 or precursor, right before it says first, "The government
14 alleges four intent factors--" and I think the Court says this
15 somewhere else, perhaps. Actually the Court says it on
16 Page 13, "If you find the government has proved at least one of
17 the intent factors." I think it also makes sense to put it
18 when we're talking about the intent factors, to say, "The
19 government alleges four intent factors but need only prove one
20 of the four factors beyond a reasonable doubt before you may
21 move on and consider aggravating factors alleged." I think
22 that makes sense to put it there.

23 THE COURT: Well, don't we say that, though, in that
24 first sentence, in "One of the ways"? It doesn't say "Four of
25 the ways."

1 MR. NEFF: Yeah. I mean, the Court does say that,
2 yeah. I-- Okay.

3 THE COURT: I guess if you wanted to we could make it
4 a little bit clearer by saying "resulting in the death of Guy
5 Luck with respect to one of the four intent factors alleged by
6 the government;" we could use the same language, something like
7 that.

8 MR. NEFF: I think that would make it a little bit
9 more clear; otherwise, it's easy to kind of miss that.

10 THE COURT: Ms. Cory?

11 MS. CORY: Your Honor, again, we have our own
12 suggestion on how the Court should word it, but I agree with
13 the government it would be helpful to give the jury some more
14 specific instructions.

15 THE COURT: Okay. Why don't we say -- in taking out
16 "ways," we put intent factors there, then, so it's obvious that
17 what the jury is being told is that they have to find at least
18 one of the four intent factors listed afterwards.

19 MR. NEFF: Yes, sir.

20 THE COURT: What's next?

21 MR. NEFF: I also think it might be a good idea --
22 and perhaps the defense has already thought of addressing this,
23 but it might be a good idea to say something along the lines
24 of, "These intent factors are not to be weighed against the
25 mitigating factors or examined on their own in order to

1 determine whether a sentence of death is justified." I think,
2 to be fair to the defendant, Title 18 and Title 21 are
3 absolutely different.

4 I think under Title 21 the intent factors are also
5 considered to be aggravating factors, and can be weighed. So
6 the jury is instructed to only find one of the intent factors
7 because they're also aggravating factors.

8 In a Title 18 situation, the intent factors are not
9 considered to be aggravating factors, and do not -- I don't
10 think the jury is supposed to consider them to be aggravating
11 factors such as they're weighing them against mitigating
12 factors. So in order to make the instruction clear and to be
13 fair to the defendant, it might be a good idea to put language
14 like that in there.

15 THE COURT: Well, we have not talked about weighing
16 at all, I don't believe, at this point in the instruction.

17 MR. NEFF: No.

18 THE COURT: The first time we talk about weighing is
19 on Page 18. And on Page 18 we specifically say that "You must
20 weigh the aggravating factor or factors found existing against
21 the mitigating factor or factors found to exist."

22 MR. NEFF: I agree that the Court says that. I'm
23 just wanting to make sure that they're clear about the fact
24 that they're not supposed to use an intent factor as an
25 aggravating factor, I guess is my point.

1 THE COURT: I think if we say anything on Page 11 it
2 would be unduly confusing, because we're now introducing a
3 concept that they've never heard before, and it's in isolation.
4 And we're going to talk about it later. To the extent there is
5 some confusion about whether these intent factors have to be
6 weighed, I think it would be more appropriate to clear that up
7 on Page 18.

8 MR. NEFF: That's fine, Judge. I just want to make
9 sure it was clear to the jury in some way.

10 THE COURT: Ms. Cory?

11 MS. CORY: For the record, we support the
12 government's view that when you introduce the appropriate
13 mental state is a very important time to let the jury know this
14 is a threshold determination they have to make before they can
15 go on to weigh aggravating and mitigating factors, and that the
16 intent state, the mental state, is not to be treated as an
17 aggravating factor later on.

18 THE COURT: Do you think, though, that that could go
19 in this part of the instruction, since they have no idea what
20 we're talking about with respect to weighing?

21 MS. CORY: Well, I think if Your Honor instructed
22 them at this point that this was a threshold issue, that would
23 be a good introduction to what they're going to be doing,
24 because I think, the way it flows now, the jury is not going to
25 understand, until perhaps it's too late, that they are going

1 through steps, and that once they have finished the intent, the
2 mental state, that's the point at which they start weighing
3 aggravating and mitigating factors, and not before. I think
4 it's very likely to get just all thrown in together in the
5 jury's mind.

6 THE COURT: Well, you'll notice that at the beginning
7 of each one of these we tell the jury that "If you've done
8 this, then you must do this," which is actually taking the jury
9 through a step-by-step process. So when you get to the
10 aggravating factors, it says, "If you find that the government
11 has proved," which means that the jury has already gone through
12 certain steps, then it says, "then you must determine." So
13 assuming they've gone through those steps, then they get to the
14 next stage. So we don't use terminology like threshold, but I
15 think that the instructions are designed to do the same thing,
16 take the jury step by step through the process that they must
17 use. And what they're doing-- The word you used was
18 "threshold." "If you find," that means they've reached that
19 threshold. If they don't find, then they don't go on to the
20 next issue.

21 MS. CORY: I just don't think you can start too early
22 to make those distinctions for them, Your Honor.

23 THE COURT: What's next, Mr. Neff?

24 MR. NEFF: Your Honor, Page 13, please. I know--
25 This is a suggestion somewhat like the one I made before. I

1 know it says in the first paragraph up there that, you know, as
2 the Court just alluded to, "If you find the government has
3 proved at least one of the intent factors, you must determine
4 whether the government has proved beyond a reasonable doubt the
5 existence of either of the two statutory aggravating factors."

6 In order to maybe flesh that out a little bit or
7 make it more clear, my suggestion is, down there in the last
8 full paragraph that starts that, "The government has alleged
9 two aggravating factors that are set out in the law; we call
10 these statutory aggravating factors," I would suggest putting
11 another sentence in there right after that that says, "The
12 government need prove only one of these factors beyond a
13 reasonable doubt before you consider," or "can consider," "may
14 consider nonstatutory aggravating factors in deciding whether
15 to impose the death penalty."

16 THE COURT: Any objection, Ms. Cory?

17 MS. CORY: Your Honor, I think actually the Court's
18 instruction here is sufficient. But if Your Honor wants to add
19 a clarification, we don't object to it.

20 THE COURT: Okay. The Court will add, "The jury need
21 only find that the government has proven one of these statutory
22 aggravating factors beyond a reasonable doubt," period. Then
23 on Page 15, at the end of the first sentence, the Court will
24 add the sentence, "However, you may not consider any
25 nonstatutory aggravating factor unless you have found at least

1 one statutory aggravating factor," period.

2 I've taken Mr. Neff's suggestion and broken it up
3 into two parts, and I put one part in the "statutory
4 aggravating factors" and the other in the "nonstatutory
5 aggravating factors," for pretty much the same reason. In the
6 language concerning "statutory aggravating factor," they've
7 never heard of "nonstatutory aggravating factor," so we're
8 introducing a concept to them that is new, with no
9 explanation, then the explanation comes later. I think it
10 makes more sense to -- if we're going to have any limits or
11 clarifications, to include that when the concept is being
12 introduced to them.

13 MR. NEFF: I agree, Judge.

14 THE COURT: What's next?

15 MR. NEFF: Staying on Page 13, the last sentence of
16 that same paragraph there, it says, "The government must prove
17 beyond a reasonable doubt that the defendant committed the
18 kidnapping, which during the first phase of the trial you found
19 the defendant guilty of, and the death or injury occurred
20 during the commission of that kidnapping." Just to mirror the
21 first part of that sentence, I would suggest putting a comma
22 there, saying, "the finding you also previously made during the
23 first phase of the trial."

24 THE COURT: Any objection?

25 MS. CORY: Yes, Your Honor. I think this is the

1 decision the jury is making at the penalty phase. And Your
2 Honor has stated it accurately. The jury can put those two
3 things together during their deliberations, or not.

4 THE COURT: The Court will reject that suggestion.
5 What's next?

6 MR. NEFF: Page 15, Your Honor, first paragraph.
7 Suggesting a sentence at the end of that paragraph that says
8 something along the lines of, "You may, but are not required
9 to, find the existence of nonstatutory aggravating factors
10 before considering imposition of the death penalty."

11 THE COURT: Ms. Cory?

12 MS. CORY: I'm sorry to be so slow, Your Honor. I'm
13 trying to put it in context of what the Court has already
14 instructed here. I think what the government is saying is a
15 true statement. I don't see that it's necessary in the context
16 of the instructions that Your Honor is giving here.

17 THE COURT: Since this is a correct statement of the
18 law, then the Court will add that, then. We'll put that at the
19 location requested by the government.

20 What's next, Mr. Neff?

21 MR. NEFF: Your Honor, that same page, 15, third
22 paragraph, "The second nonstatutory aggravating factor alleged
23 by the government is that the defendant would be a danger in
24 the future to the lives of others," I think also under that,
25 and this is part of the notice, and part of what we'll likely

1 argue, and the proof has shown, is to put something along the
2 lines of "and that the defendant demonstrated a lack of remorse
3 for his crime and has failed to adapt to societal norms."

4 THE COURT: And what specific evidence was there
5 introduced along those lines?

6 MR. NEFF: About his lack of remorse and failure to
7 adapt to societal norms?

8 THE COURT: Yes.

9 MR. NEFF: Well, Judge, for one thing, the defendant
10 had the opportunity to express remorse. His actions after the
11 crime --

12 THE COURT: So it's not so much evidence as a lack of
13 what the defendant did, then.

14 MR. NEFF: Well, that's part of it. But there has
15 also been a significant amount of evidence about the
16 defendant's actions after the crime was committed and the fact
17 that they show that he had no remorse for the commission of the
18 crime, not the least of which is the escape, but there are
19 several other things as well. The defense itself put on proof
20 about how he's failed to adapt to societal norms. And
21 obviously that's part of -- that was part of the notice. And I
22 think the proof has been pretty clear about both of those
23 issues.

24 MS. CORY: Your Honor, I don't --

25 MR. NEFF: He talks about acting like -- the

1 government acting like he killed the President, talks about
2 committing a life of crime, you know, laughing about it,
3 laughing about his crimes; in one of the letters that's been
4 admitted, laughing about the victim. Judge, there's been
5 boatloads of proof about the defendant's lack of remorse and
6 boatloads of proof about his failure to adapt to societal
7 norms. The defense put on a lot of the proof about the
8 defendant failing to adapt to societal norms.

9 THE COURT: Ms. Cory?

10 MS. CORY: Your Honor, I don't think there has been
11 any evidence, in the penalty phase or previously, about a lack
12 of remorse. I don't think that instruction is appropriate,
13 just because the government hasn't made any showing to support
14 it.

15 THE COURT: Well, what the Court was trying to do was
16 to confine the jury as to what evidence it could look at in
17 making a determination that the defendant would or would not be
18 a danger in the future to the lives and safety of others. I
19 don't think it would be improper for the government to argue
20 that there has been a lack of remorse in this case, but I'm not
21 satisfied that there has been specific evidence introduced that
22 would allow the Court to comment on it in limiting the jury's
23 consideration.

24 There were other things that were introduced, that
25 the Court had given some thought to, that the Court did not

1 put in. I believe it was Agent Melia who testified that Joey
2 Marshall told him that the defendant had been robbing, I
3 think, drug dealers while he was avoiding capture. Even if
4 the Court thought that the jury could accept that, I'm not
5 sure that says anything at all about whether the defendant is
6 a danger to others. And what I tried to do was just specify
7 things that I thought the jury could look at fairly
8 comfortably in making such a decision. So I don't know that I
9 feel comfortable in giving an instruction along the lines of
10 remorse.

11 MR. NEFF: What about the failure to adapt to
12 societal norms, Judge, which is also --

13 THE COURT: And the evidence came from the defense?

14 MR. NEFF: The evidence-- Well, obviously the
15 evidence comes from --

16 THE COURT: Dr. Cunningham's evidence.

17 MR. NEFF: Not just Dr. Cunningham. I think that was
18 part of it. But I was just pointing out that the defense
19 themselves put on proof about the defendant's failure to adapt
20 to societal norms. But obviously we have the proof of
21 everything the defendant did, both leading up to the murder,
22 during the course of the murder, and after the murder, all of
23 which support the concept that he has failed to adapt to
24 societal norms. Even after he's been caught in this particular
25 enterprise, he has failed to adapt to societal norms.

1 THE COURT: Ms. Cory?

2 MS. CORY: Your Honor, none of the evidence of
3 Mr. Taylor's past failure to adapt to societal norms, such as,
4 quote, unquote, his "life of crime," does anything to go toward
5 his future dangerousness.

6 MR. NEFF: Well, Judge, it clearly does. I mean, in
7 fact, our -- that's one of the factors that we discuss in the
8 future dangerousness. I think it's under our-- The amended
9 superseding notice of intent to seek the death penalty
10 specifically points out, on Page 4, Number 1, "Rejon Taylor has
11 failed to adapt his behavior to societal norms, thereby
12 signifying a low rehabilitative potential," which goes directly
13 to his future danger. Obviously I think his lack of remorse
14 goes to future danger as well. I understand the Court's ruling
15 on that. We'll obviously argue it. But I think, clearly, if
16 somebody has failed to adapt to societal norms, they're a
17 future danger, especially even after he's been caught.

18 MS. CORY: Your Honor, no more than anybody else who
19 stands before the Court having been convicted of a crime.
20 There is nothing about the evidence that Mr. Neff is talking
21 about that is uniquely true of Rejon Taylor. Your Honor has
22 denied our putting in the kind of evidence that you said was
23 too broad because it dealt with more than just what's unique to
24 Mr. Taylor. I mean, unique to Mr. Taylor is that he does not
25 have a criminal record, he does not have prior convictions.

1 Most people, by the time they get into federal court, have, you
2 know, a boatload of prior convictions, and that's what gets
3 them here. So to say this is something that applies to Rejon
4 Taylor, that the evidence, such as it is, that he has failed to
5 adapt establishes a future danger just isn't there.

6 MR. NEFF: Judge, I mean, this goes specifically to
7 the defendant. We're talking about a guy who continues to
8 conspire with his codefendant to perpetrate a fraud on the
9 Court. We're talking about a guy who tries to escape from
10 prison. We're talking about a guy who laughs at his victim.
11 We're talking about a guy who laughs at his crime. This is all
12 very specific to Rejon Taylor. This is not evidence that is
13 general in nature and would apply to any defendant.

14 THE COURT: Well, the Court, as it has commented
15 before, is looking at evidence or information introduced in the
16 case, not allegations by the parties. And I do not think that
17 the evidence as to remorse rises to the level where the Court
18 would feel comfortable including that in this particular
19 instruction. The Court does believe that there has been some
20 evidence introduced, both by the government and also by the
21 defense, that the defendant heretofore has failed to adapt to
22 societal norms. So the Court will include that language, then,
23 at the end of this sentence. We'll put a comma after
24 "grandmother," and then we'll put "and defendant failed to
25 adapt to societal norms." But the Court will not make any

1 statements regarding remorse.

2 MR. NEFF: I understand, Judge. If we could also put
3 in this -- where the Court's listed some of those things, if we
4 could put in there something about this list not being
5 exhaustive, that the jury may consider other proof that the
6 government has put on in deciding whether the government's
7 proved any of these aggravating factors beyond a reasonable
8 doubt.

9 THE COURT: No, I think that's fairly clear from the
10 language, "In support of this allegation, the government
11 introduced." The Court does not want to leave it completely
12 open-ended, for some of the reasons the Court rejected the
13 testimony of Dr. Cunningham. I mean, one of the arguments for
14 introducing Dr. Cunningham's evidence was that some juror might
15 believe that the defendant was going to be a bomb-maker in
16 prison or he was going to jump on all of the other inmates and
17 beat them up. There is no evidence to support that. And what
18 the Court was trying to do was to limit things to what the
19 evidence was in the case the jury could rely upon and not make
20 decisions based on speculation.

21 MR. NEFF: And, Judge, I agree. I guess my only
22 point is, there may be other proof that either the Court or the
23 government has not thought of to put specifically in here.

24 THE COURT: Well, if you think it supports this, my
25 suggestion would be that you argue it. If Ms. Cory disagrees,

1 she will object.

2 MR. NEFF: Okay. Thank you, Your Honor. Page 17,
3 please, Judge. Page 17, I think that paragraph that starts out
4 "Mitigating factors," I suggest -- I suggest either one of two
5 things, either the last sentence of that paragraph be stricken
6 because it doesn't make any sense, or that if the Court keeps
7 that sentence in there, that the Court add an additional
8 sentence that says, "Individual jurors, however, are not
9 required to consider mitigating factors found only by other
10 jurors." And there is a case that supports this idea very
11 clearly, *United States v. Webster*, 162 F.3d 308 (5th Circuit,
12 1998).

13 It does not make sense to tell a juror that they
14 should consider a factor that they have not found, a factor
15 that they have rejected. And I understand that the
16 Eighth Circuit, which provides the pattern instructions for
17 capital cases, does include this sentence in their pattern
18 instructions, but I don't think that's a correct statement of
19 the law. I think the government's position is that individual
20 jurors should not have to consider a factor they did not find
21 to be mitigating. I know that's a double negative. But it
22 just doesn't make any sense, Judge, to say that, and I don't
23 think it's an accurate statement of the law.

24 THE COURT: Ms. Cory?

25 MS. CORY: Your Honor, I think it is an accurate

1 statement of the law. In fact, I think every juror must
2 consider every mitigating factor that is proposed. They are
3 free to reject it, but they are not free to refuse to consider
4 it first.

5 THE COURT: Okay. I'll take a look at this, then.
6 We did borrow from the Eighth Circuit. I don't know that we
7 did any independent research on this particular statement. And
8 perhaps it could be written more clearly; I don't know. But
9 the government says it's not supported by the law.

10 Ms. Cory, you don't have any cases offhand, do you,
11 that --

12 MS. CORY: I'm looking, Your Honor.

13 MR. NEFF: Judge, I'd just point the Court to that
14 Webster case.

15 THE COURT: Webster case?

16 MR. NEFF: Yes, sir.

17 MS. CORY: Your Honor, I think if you go back to
18 cases like *Eddings v. Oklahoma* or *Mills v. Maryland*, it
19 requires the sentencer to consider any mitigating information.
20 The statute itself, 3592(a), says, "The finder of fact shall
21 consider any mitigating factor." *Williams v. Taylor*, 529 U.S.
22 362; *Tennard v. Dretke*, 542 U.S. 274 (2004); *Abdul-Kabir v.*
23 *Quarterman*, 127 S.Ct. 1654; *Ayers v. Belmontes*, 127 S.Ct. 469,
24 2006 case. I think the force of the law is very much behind
25 the concept that every mitigating factor must be considered.

1 MR. NEFF: Well, Judge, perhaps Ms. Cory is
2 misunderstanding me. And I'm not sure if I'm making myself
3 clear. Maybe I'm not. I think I am, though. Obviously I'm
4 not saying the jurors should not consider mitigating factors.
5 What I'm saying is, jurors should not have to be -- be required
6 to have to consider a mitigating factor that that individual
7 juror has rejected. In other words, if Mr. Poole and I are
8 deliberating as jurors, and Mr. Poole finds a mitigating
9 factor, and I say, "No, I don't think that the defense has
10 proven that mitigating factor," I should not have to consider
11 Mr. Poole's finding when I'm considering my vote as to whether
12 to impose the death penalty or not. That's my point.

13 I think Ms. Cory is right that obviously jurors
14 should consider all mitigating factors; but if a juror has
15 considered it and rejected it, the juror should not then be
16 required to have to consider something that they've already
17 rejected. That's my point, and I think that's what this case
18 says.

19 THE COURT: Okay. We'll take a look at that. I
20 think what the Court had in mind happening as it thought about
21 this particular instruction was that at some point each juror
22 would outline or list what they considered to be mitigating
23 factors, and the list would differ as to each juror, and then
24 as a group they would just go through everything that was there
25 and they'd make some decisions on it. They may convince people

1 who had listed something as a mitigating factor that's not a
2 mitigating factor, or they may convince other jurors this is a
3 mitigating factor, but I thought there would be some collective
4 discussion about all of the factors that each particular person
5 had listed. But we'll take a look at the case and --

6 MR. NEFF: Thank you, Your Honor.

7 THE COURT: -- see. Next page?

8 MR. NEFF: Actually same page, last paragraph,
9 suggestion regarding a sentence at the end of the paragraph
10 that says, "Whether the factor is supported by a preponderance
11 of the evidence and whether it is mitigating is a matter for
12 you to decide."

13 THE COURT: "Whether a mitigating factor has been
14 proven and whether it is a mitigating factor is for you to
15 decide"?

16 MR. NEFF: "Whether the mitigating factor is
17 supported by a preponderance of the evidence and whether it is
18 mitigating is a factor -- a matter for you to decide."

19 THE COURT: Ms. Cory?

20 MS. CORY: Your Honor, I think you've already said
21 that.

22 MR. NEFF: Well, not necessarily, because somebody
23 could find that evidence supports a factor by a preponderance
24 of the evidence, but they may -- that juror may not believe
25 that that factor is a mitigating factor, or vice versa; they

1 may say, "Well, this would be a mitigating factor, but the
2 defense didn't prove it by a preponderance of the evidence." I
3 think that makes it clear that the juror has to find -- the
4 individual juror and then the jury as a whole has to find both.

5 MS. CORY: The fact that this whole section is
6 talking about mitigating factors, I think, explains
7 sufficiently to the jury that they can't find it as a
8 mitigating factor unless they find it's a mitigating factor.

9 THE COURT: The Court tends to agree with Ms. Cory,
10 but I don't know that there is any harm that comes from adding
11 it, so the Court will do it.

12 MR. NEFF: Thank you, Your Honor. Page 18, last --
13 it's not the full paragraph, but --

14 THE COURT: This is the page where you wanted to add
15 the sentence that you do not weigh the intent factors?

16 MR. NEFF: Yes, sir, I think that's what -- it makes
17 sense there. I'm specifically concerned, on Page 18, with the
18 last full sentence on the page, "If one or more of you so find,
19 you must return a sentence of life in prison without the
20 possibility of release." I think that -- I think that this may
21 be an incorrect statement of the law. I think the sentence
22 undermines the requirement of unanimity under Title 18,
23 3593(e). I think it basically gives the jury an out rather
24 than asking them to stay in and deliberate and try to reach a
25 unanimous agreement.

1 And I'm going to have a similar argument here on the
2 next -- on Page 20 when we talk about "Consequences of
3 Deliberations." And I can go to that right now if the Court
4 wishes for me to. I think when you put it together it will
5 make more sense. On Page 20, in the penultimate sentence
6 there, the next-to-last sentence on that page, on that
7 instruction, I think that the Court should say, "If you
8 unanimously determine that the defendant should receive a
9 sentence of life imprisonment without possibility of release,
10 then that is the sentence." I suggest that the Court take out
11 the last sentence entirely. And there are-- I have a couple
12 of cases to support this; one is *Jones v. United States*, 527
13 U.S. 373, Supreme Court case from 1999. In that case the
14 court said that the object of the jury system is to secure
15 unanimity; and it also said that the government has a strong
16 interest, in capital sentencing proceedings, for the jury to
17 express the conscience of the community on the ultimate
18 question of life or death. Charging the jury in the way
19 that's expressed here undermines that strong governmental
20 interest. There is also a Sixth Circuit case from 2000, *Scott*
21 *v. Mitchell*, 209 F.3d 854, and the quote from that case says,
22 "The Supreme Court has chastised such instructions as this as
23 encouraging deadlock and undermining the strong government
24 interest in unanimous verdicts."

25 I'm afraid both that that sentence on Page 18, that

1 last full sentence, as well as the last full sentence on
2 Page 20 undermine the interest in unanimity. And I also think
3 that the Court should put the word unanimously in the sentence
4 which I'm now saying should be the last sentence, "If you
5 unanimously determine that the defendant should receive a
6 sentence of life imprisonment." Obviously we know what the
7 law is. The law is, if the jury cannot reach a unanimous
8 decision, if they hang, then the result is life in prison
9 without parole.

10 I don't think that this should be told to the jury.
11 I think the jury should be encouraged-- And if the jury does
12 get hung, there is precedent for the Court sending them back
13 with an *Allen* charge in capital cases as well. I don't have
14 that right at the tip of my fingers here. But we feel that
15 those particular statements in the instructions undermine the
16 unanimity concept.

17 THE COURT: Ms. Cory?

18 MS. CORY: Your Honor, before I respond directly to
19 what Mr. Neff said, I would say that on Page 20, that last
20 sentence left out an important word, which is "will receive a
21 sentence of life imprisonment with no possibility of release."

22 THE COURT: Yes, that should say "without," instead
23 of "with."

24 MS. CORY: With that one change, both of these
25 sentences, the one on Page 18 to which Mr. Neff has referred

1 and the one on Page 20, are absolutely correct statements of
2 the law. I don't see any reason to keep the jury in the dark
3 about this. Your Honor is telling them that they need to
4 deliberate, that they need to try to reach a unanimous verdict.
5 But to let them think that the result of their failure to reach
6 a unanimous verdict is anything other than that Your Honor will
7 impose a sentence of life without possibility of release, it's
8 -- I won't say "deceitful," but it's holding back something
9 from the jury that they have every right to know. And it's a
10 correct statement of the law.

11 THE COURT: The Court will take a look at the cases,
12 then, cited by the government, and will make a decision on this
13 after the Court --

14 MR. NEFF: Judge, the pin cites, by the way, on *Jones*
15 v. *United States*, the 527 U. S. 373, the pin cites are 382 to
16 383, on the things that I cited there. And on the *Scott v.*
17 *Mitchell*, 205 F.3d 854, that pin cite is 877.

18 THE COURT: Okay. Anything else?

19 MR. NEFF: One moment, please, Judge.

20 (Brief pause.)

21 MR. NEFF: Judge, going on to the -- I guess the jury
22 form, I don't -- the jury form itself doesn't have page
23 numbers, but I think it's the third page, under "Mitigating
24 Factors," Number 5 there, I don't know that there's even an
25 allegation that there is no scientific or physical evidence.

1 In fact, there was plentiful amounts of scientific and physical
2 evidence presented during the case. There was DNA. There was
3 ballistics. There was fingerprint evidence. I'm not sure
4 where that's coming from. I'm not sure why the Court included
5 that. But --

6 THE COURT: I included it because the defense gave it
7 to us.

8 MR. NEFF: Okay. Well --

9 THE COURT: I didn't make any changes to it.

10 MR. NEFF: Okay. Got you. I don't think it's
11 supported by the evidence, or, I guess, what the defense say,
12 lack of evidence.

13 THE COURT: Ms. Cory?

14 MS. CORY: Your Honor, the rest of that sentence read
15 "showing whether Rejon Taylor or Sir Jack Matthews killed Guy
16 Luck," and I think that's specifically referencing the
17 testimony of Dr. King.

18 MR. NEFF: Well, but there was testimony about who
19 had which gun, who got shot with which gun, whose fingerprints
20 were inside the van, whose blood. I mean, Judge, there was
21 copious amounts of physical proof, physical and scientific
22 proof.

23 MS. CORY: And we are not saying there was no
24 scientific proof or there was no physical proof. We are going
25 back to the question in the jury's mind, how certain are they

1 who it was who fired the fatal shot.

2 THE COURT: Mr. Neff, what the Court has done here is
3 just taken all of the defense's submissions and just included
4 them verbatim. To the extent they're not supported by the
5 evidence, I think you can point that out in your argument.

6 MR. NEFF: Judge, yes, I understand that.

7 THE COURT: I'm not approving or disapproving of any
8 of the mitigating factors. The defense has given them to us,
9 and we're giving the jury a chance to act on them. We're not
10 approving them. We're not disapproving them. We're not saying
11 they're supported by the evidence. We're not saying they're
12 not supported by the evidence. They're just what the defense
13 says, so here they are.

14 MR. NEFF: I guess in that vein, then, I have a
15 question for the Court, because I would have similar kinds of
16 objections to many, many of the mitigating factors that the
17 defense has submitted to the Court which I say have not been
18 supported by evidence. Is it the Court's intention to give
19 those instructions regardless, or should I abandon my --

20 THE COURT: What do you mean, "regardless"?

21 MR. NEFF: Well, I mean, I guess I was going to argue
22 about some of the things we would submit the proof has not
23 supported in terms of mitigating evidence, that the Court
24 should not instruct them about things that there's no proof
25 for. There-- I didn't count how many, let's see -- maybe the

1 Court did -- how many mitigating factors --

2 THE COURT: There was fifty-something. And what I
3 had in mind, just as I had done with the government's
4 aggravating factors, list and summarize them, but I did not
5 think I could do that with 50. And some of them the Court was
6 not -- the Court did not want to be in a position of telling
7 the jury that there had been evidence to support them. So what
8 I decided to do was, instead of discussing them in the body of
9 the instructions, just say, "The defense has a list, and you'll
10 have a chance to see the list." So the Court has provided
11 them. There was -- I don't think it's included in this list,
12 but at one time there was a mitigating factor submitted
13 regarding French law, and as a matter of law the Court
14 determined that that would not apply so it was not proper for
15 the jury to be concerned about law. But that's different from
16 facts.

17 MR. NEFF: Okay, Judge. Well-- All right. I guess
18 we'll just -- I guess we'll see if the Court agrees with me,
19 then. For example, in light of what the Court's just said, if
20 you go to Number 33, for example, one of the factors --
21 mitigating factors that the Court has listed here—I guess that
22 the defense sent them—my understanding of the way the Court
23 ruled on the law is that that's not appropriate, that's not an
24 appropriate mitigating factor, execution impact evidence is not
25 appropriate evidence for the jury to consider, just as an

1 example of-- I guess that's what I'm trying to figure out—if
2 the Court is just going to include wholesale the defendant's
3 suggestions about what the mitigating evidence is, or if the
4 Court wants to be nuanced about which ones it gives. I guess I
5 just don't know the answer to that question.

6 THE COURT: Ms. Cory, this one that Mr. Neff just
7 pointed out, I think this probably is more an issue of law
8 rather than fact, isn't it?

9 MS. CORY: Your Honor, you did not permit the family
10 witnesses to testify about how Rejon's death would affect them.
11 I would still say that the jury is entitled to contemplate the
12 fact that not only has Guy Luck's family suffered a loss but
13 Rejon Taylor's family will suffer a loss. This is not a young
14 man that no one cares about, that's just society's refuse.
15 This is a person who has a family, who has friends, and who
16 will be -- it will be a loss if he's executed. I think the
17 jury is going to think about that anyway. And for us to be
18 allowed to formulate it is simply going to aid them in their
19 discussion.

20 THE COURT: This is an issue here that I think runs
21 more into the legal arena, much like the French law question.
22 The Court did not allow friends and family members of the
23 defendant to talk about what effect a possible future execution
24 of the defendant will have on their lives at some unknown point
25 in the future, and the Court did that for legal reasons. So I

1 think the legal premise of the question is somewhat lacking.
2 And because of the Court's legal decision, there is no evidence
3 produced to support it. So the Court will strike that one,
4 then, Number 33. It's not so much factual as it is legal.

5 What's next, Mr. Neff?

6 MR. NEFF: Judge, in terms -- I guess in terms of
7 legal questions, that's the only other one that I saw.
8 Obviously we take issue with whether there has been evidence to
9 support many of these factors which have been alleged here, and
10 would like for them to not be included, or, in the alternative,
11 some way to, I guess, consolidate some of these things. For
12 example, it seems like one of the philosophies or theories that
13 the defense is trying to put forth is that there are people
14 that are more culpable than the defendant in this case. I
15 think the Court could just consolidate some of these things,
16 talking about what Joey Marshall did and what Sir Matthews did
17 on other occasions or whatever, can consolidate those things
18 and say -- ask the jury whether they find if there is another
19 individual who is equally or more culpable than the defendant
20 in the crime, in terms of their moral culpability, rather than
21 setting forth a separate fact.

22 I guess ultimately, Judge, we've alleged only a few
23 aggravating factors, both statutory and nonstatutory
24 aggravating factors. If the Court is going to leave this in
25 here, I would ask for an instruction similar to what the Court

1 does in terms of the instruction that it gives with regard to
2 the number of witnesses, that the number of mitigating
3 factors-- And I know the Court talks about the weighing, and
4 I think maybe that takes care of it to some degree, but it
5 just looks overwhelming to me, all of these mitigating
6 factors. And, I mean, I think obviously some of these the
7 jury is going to find, and they can weight them as much as
8 possible. I mean, "Rejon Taylor's life has value," I vote for
9 that one. But I just don't know that it has a place,
10 necessarily, in here as a mitigating factor, as well as some
11 of these others, too. So if we could consolidate and give an
12 instruction about not considering the quantity as much as the
13 quality of the proof as to each of the mitigating and
14 aggravating factors, to make it more clear.

15 THE COURT: On Page 18 of the draft, it says, "In
16 other words, you should not simply count the number of
17 aggravating and mitigating factors and reach a decision on
18 which number is greater; you should consider the weight and
19 value of each factor. The law contemplates that different
20 factors may be given different weights or values by different
21 jurors. Thus, you may find that one mitigating factor
22 outweighs all aggravating factors combined, or that any
23 aggravating factors proved do not, standing alone, justify the
24 imposition of a sentence of death. Similarly you may
25 unanimously find that a particular aggravating factor

1 sufficiently outweighs all mitigating factors combined to
2 justify a sentence of death. You are to decide what weight or
3 value is to be given to a particular aggravating or mitigating
4 factor in your decision-making process."

5 Mr. Neff, as I indicated before, I think originally
6 there were fifty-something --

7 MS. CORY: Fifty-five.

8 THE COURT: Fifty-five. And the Court asked the
9 defense to consolidate them. And I think what you see now is
10 their effort at consolidating.

11 MR. NEFF: Well, I would have made a better effort to
12 consolidate, Judge.

13 MS. CORY: Your Honor, I feel sure that Mr. Neff
14 would have thought of as many mitigating factors as he could
15 have, were he in our shoes.

16 MR. NEFF: I'm sure I would have, Your Honor. I
17 think that's all I have, Judge.

18 THE COURT: Ms. Cory?

19 MS. CORY: Thank you, Your Honor.

20 Your Honor, I did type up what is, hopefully, a
21 helpful outline of what changes we were asking for.

22 THE COURT: Excellent. Thank you.

23 MS. CORY: And I apologize. There may be some
24 overlap with what we had just discussed as far as the
25 government's changes are concerned. I tried to mark those, but

1 I may repeat some of it, because some of our issues were with
2 the same parts of the instructions.

3 THE COURT: Okay. So first is on Page 3, when we
4 define evidence, you'd like to add the word relevant before
5 "evidence"?

6 MS. CORY: Yes, Your Honor.

7 THE COURT: Any objection?

8 MR. NEFF: No, Your Honor.

9 THE COURT: Okay. We'll do that, then.

10 MS. CORY: Then the second paragraph we asked to be
11 deleted this: "With the exception of your ability to consider
12 information that does not rise to the level of evidence." I
13 think the only thing that that could possibly apply to is
14 Mr. Taylor's allocution, and that your instruction on his
15 allocution covers that. To leave it --

16 THE COURT: It also applies to Agent Melia's
17 testimony; I'm trying to think what else. It's been a long
18 time. It may refer to some of the defense witness testimony.
19 It refers to Dr. Cunningham's testimony. There were a lot of
20 people that gave statements that in an ordinary proceeding
21 would not have been admitted into evidence because it was
22 hearsay or there was some other evidentiary barrier to allowing
23 it. We let it in. And this-- Before, I told the jury what
24 evidence is, and I recall telling the jury that hearsay
25 evidence is not admissible, and I explained to them why hearsay

1 does not come in. And then in this stage they're hearing
2 second- and thirdhand about things. And I wanted to make sure
3 that the jury understood that they could still consider it even
4 though I told them previously in the guilt phase that this
5 stuff is not evidence.

6 MS. CORY: Then I would say this sentence is going to
7 confuse them, because they're not going to know whether you are
8 telling them at the penalty phase that they can or cannot
9 consider evidence that doesn't -- or information that does not
10 rise to the level of evidence. And if the Court --

11 THE COURT: We said that in the first sentence. It
12 also said that in the preliminary instructions when the jury
13 was brought back in. I told them that they could consider
14 things other than evidence.

15 MS. CORY: Well, I'm not sure where in the
16 instructions Your Honor says that. I'm concerned the jury is
17 going to read this to mean that anything that doesn't
18 constitute evidence that was admissible at the first stage is
19 something they really aren't supposed to consider.

20 THE COURT: Well, it says, "Evidence or other proper
21 information that was presented at the sentencing phase of the
22 trial," in the first sentence.

23 MS. CORY: Yes.

24 THE COURT: So they can consider all the evidence
25 that came in during the guilt phase, and they can consider all

1 the evidence or other proper information that came in during
2 this phase of the trial.

3 MS. CORY: I would still say, Your Honor, that that
4 particular sentence that constitutes the second paragraph is
5 going to confuse them as to what they can consider.

6 THE COURT: Mr. Neff?

7 MR. NEFF: Judge, I think it's fine the way it is.
8 I'm not sure I totally understand Ms. Cory's objection, but
9 I --

10 THE COURT: The concern here was to make sure that
11 the jury understands that they're being told that the
12 instructions we gave them previously still apply. We told them
13 that they could only consider evidence, and we defined what
14 evidence was --

15 MR. NEFF: Right.

16 THE COURT: -- and we told them you could only
17 consider that. Well, the rules have changed now. And what
18 we're trying to tell them is, "Not only can you consider
19 evidence, you can also consider other things that do not rise
20 to the level of evidence."

21 MR. NEFF: Which you say, Judge.

22 MS. CORY: Your Honor, perhaps we could change the
23 heading, then, to "Information."

24 THE COURT: That will be fine. We can do that.

25 MS. CORY: Thanks.

1 MR. NEFF: That's fine. How about "Evidence and
2 Information"?

3 MS. CORY: Well, at the penalty phase they can
4 consider any information; that includes evidence, and that
5 includes other things that aren't evidence.

6 THE COURT: Like hearsay.

7 MS. CORY: Yes. Then we had asked for a sentence to
8 be added at the very end of Paragraph 3, to read, "If in the
9 course of your deliberations it appears that such matters are
10 being discussed, please cease your discussions and advise the
11 Court immediately." And that's something that of course the
12 jury should do. And in this case we think it's important to
13 reemphasize that to them.

14 MR. NEFF: Judge, I think that's getting dangerously
15 close to discussing the deliberations process of the jury,
16 which I don't think the Court is allowed to do.

17 THE COURT: The Court agrees. The Court will not add
18 that. What's next?

19 MS. CORY: Going on to Page 5, Your Honor, we were
20 requesting a revision to the final two sentences in the
21 "Unsworn Allocution" section, that they read "Instead, this was
22 his," being Mr. Taylor's, "opportunity to speak to you
23 personally regarding himself and your sentencing decision.
24 Although you will not be treating his statement as evidence,
25 you must give his statement consideration when reaching your

1 decision regarding sentencing."

2 THE COURT: Any objection, Mr. Neff?

3 MR. NEFF: I would say, "You may give his statement
4 consideration," not "you must."

5 MS. CORY: Here again, Your Honor, I think the jury
6 must give it consideration. They can give it whatever weight
7 they want to. They can reject it. But they must consider it.

8 THE COURT: Okay. We will make that change, then.

9 MS. CORY: Thank you, Your Honor. And then I think
10 we already made the decision regarding that second paragraph --

11 THE COURT: Yes, we've moved the second one.

12 MS. CORY: -- the second instruction.

13 THE COURT: Do you know where you want it to go?

14 MS. CORY: Your Honor, I had asked it be placed
15 following "Lawyers' Objections," just to get it far enough away
16 from the allocution instruction so as not to confuse the jury.

17 THE COURT: It's about four pages over, then. Why
18 don't we head this, then, "Defendant's Right to Testify or Not
19 Testify"? Why don't we call it that?

20 MS. CORY: Okay.

21 THE COURT: Okay. So we'll move it there, then.
22 What's next?

23 MS. CORY: Page 11, "Requisite Mental State." I
24 think Mr. Neff and I were in agreement on a good bit of this,
25 and I'm a little confused at what the Court's final ruling was

1 as to how you were going to handle the end of the first
2 paragraph. Our suggestion is-- Here you didn't like the
3 reference to it being a threshold determination.

4 THE COURT: Knowing the jury, do you think most of
5 them, in their everyday conversation, use the word threshold?

6 MS. CORY: I don't know. Perhaps they use if, then
7 instead. But they would understand the comment. And then the
8 last part of the sentence -- the last part of that paragraph, I
9 think Your Honor decided, "Please bear in mind the intent
10 factors listed below are not, themselves, aggravating factors,
11 and may not be weighed or considered by you," you intend to
12 place that later on in the instructions, but you do intend to
13 use that statement?

14 THE COURT: I think I have addressed that in
15 discussing the government's request.

16 MS. CORY: Yes.

17 THE COURT: We're going to put intent factor in that
18 first paragraph, which will specify, and we're going to later
19 on tell the jury that there is no need to weigh the intent
20 factor.

21 MS. CORY: Yes, Your Honor. The next thing was on
22 Page 12, still on the "Requisite Mental State." We were asking
23 for an additional paragraph that would read, at the very end,
24 "Any finding that one of these four types of intents has been
25 established by the government must be unanimous. It must be a

1 finding by all 12 members of the jury. If any of you are left,
2 after impartially considering it, with a reasonable doubt as to
3 whether the government has proven one of these four types of
4 intent with respect to Rejon Taylor, you should so indicate on
5 Question 2 of the verdict form. In that event, your sentencing
6 deliberations will be at an end."

7 Here again, it's our desire to make sure the jury
8 understands up front that their decision-making process falls
9 into several discrete areas.

10 THE COURT: Mr. Neff?

11 MR. NEFF: Your Honor, I don't have any objection to
12 the first sentence that Ms. Cory has suggested or proposed
13 there. I mean, I think that's-- Actually the whole thing is
14 accurate. I think in other places on the form or in the
15 instructions the Court -- maybe it was the jury verdict form,
16 the Court says something about "proceed," "continue to Question
17 Number 7," or something along those lines. Perhaps this can be
18 put on the form, if it's not already--let me look--in terms of
19 the statutory intent factors. I think the Court's already
20 covered the rest of what Ms. Cory is concerned about on the
21 verdict form, looking at it here. Question Number 2, at the
22 bottom, it says, "If you answer yes to one or more parts of
23 Question 2, answer Question 3. If you answer no to any or all
24 parts of Question 2, skip to Question 7."

25 I don't disagree with Ms. Cory that the four types

1 of intent has to be unanimous and found beyond a reasonable
2 doubt. And that is not in that instruction, Judge, and I
3 agree it probably should be.

4 THE COURT: The Court had considered doing this. In
5 the Eighth Circuit pattern instruction they have language like
6 this after each particular section. So what happens is that
7 the Court will be repeating itself over and over again and
8 saying the same thing. So, to avoid that, on Page 7 the Court
9 indicated that wherever the government has the burden of proof,
10 the government must carry their burden of proof by proof beyond
11 a reasonable doubt.

12 So wherever later on in the instruction the Court
13 talks about the government's burden, this earlier instruction
14 will cover it, instead of having the Court repeat the same
15 thing over and over and over again. I mean, that is true of
16 the intent factor, the statutory aggravating factor, the
17 nonstatutory aggravating factor. So we'll be saying the same
18 thing over and over and over again, which I would like to
19 avoid, since I'm reading it.

20 MS. CORY: Your Honor, I have never been in the
21 military, but I have been a teacher, and I know that people
22 learn by repetition. And I know you don't want to put the jury
23 to sleep listening to 50 pages of instructions. But, on the
24 other hand, everything you say to them carries special weight
25 because you said it to them. And I think putting it in the

1 instructions, even if it involves repeating it at appropriate
2 moments, has a valuable effect on the jury, and is going to
3 keep them from getting confused when they start going through
4 the verdict form and it says things like, you know, "If you say
5 yes to this, skip to question such-and-such, but if you say no
6 to this, go to the next question." Your instructions are going
7 to be what carries them through their deliberation.

8 THE COURT: Well, there are theories as to what
9 people retain; and one is primacy, and the other is recency.
10 Primacy would involve what the Court instructs the jury here in
11 court orally. And the Court providing the jury with the
12 instruction itself will take care of the recency. So the jury
13 will have the written instruction, and they'll be able to go
14 through it, and they will see that the way that the instruction
15 is written tells them that whenever there is a burden on the
16 government it's proof beyond a reasonable doubt, whenever there
17 is a burden on the defendant it's only by a preponderance of
18 the evidence.

19 So I think that concern is taken care of by the
20 Court providing the jury with a written copy of the
21 instruction. Each juror will have a written copy of the
22 instruction. And, believe me, they pay close attention to the
23 instructions. When you go back and look at them, they have
24 red marking and arrows and things, they've highlighted things.
25 They pay very close attention to the instructions. What's

1 next?

2 MS. CORY: Next would be Page 13. We're asking for
3 three small changes; one, since two of the alleged statutory
4 aggravating factors were knocked out, we ask that it be changed
5 to "either of the two statutory aggravating factors." That's
6 the first paragraph there.

7 Third paragraph, where Your Honor is talking --
8 after the first sentence, where you're talking about
9 mitigating and aggravating, we have a real concern that there
10 is a commonsense understanding of mitigating which means it
11 only goes to the underlying offense, and we're asking for a
12 sentence to be added saying, "In this context the word
13 mitigate refers to the sentence to be imposed, and not to the
14 underlying crime." That would be right after the first
15 sentence in the third paragraph.

16 And finally --

17 THE COURT: Any objection, Mr. Neff?

18 MR. NEFF: Well, Judge, yeah, actually I do. I think
19 that the defense lists all these factors the Court is going to
20 tell some of them are mitigating factors relating specifically
21 to the underlying crime. So I'm not sure that adding that
22 would be appropriate. Seems contradictory to me.

23 MS. CORY: Any mitigating factor that we're asking
24 the jury to consider is in the context of what the penalty is
25 that they're going to propose, either life or death.

1 MR. NEFF: But they're asking about mitigating--
2 They're asking the jury to find mitigating factors relating to
3 the underlying crime. So I think that is more confusing than
4 anything. I think just leaving it like it is is fine.

5 THE COURT: I'll take a look at this. What's next?

6 MS. CORY: Then our final comment on Page 13 was to
7 introduce the concept of weighing. Paragraph 3, at the very
8 end of that last sentence, to change "which might indicate that
9 the defendant should not be sentenced to death" to "which
10 weighs against a sentence of death."

11 THE COURT: Mr. Neff?

12 MR. NEFF: "Which might weigh against a sentence of
13 death." I will agree.

14 THE COURT: Ms. Cory?

15 MS. CORY: I think the proper replacement for what
16 the Court has there, "should not be sentenced to death," is
17 "weighs against a sentence of death." The jury -- again,
18 they're the ones that are going to decide whether to accept it
19 or reject it.

20 THE COURT: Well, I think the language that is there
21 now takes care of that. If the parties are agreeable to a
22 change, I don't mind changing it. I don't think it adds or
23 takes anything away from it. Mr. Neff would like to keep in
24 the word "might," which I do see in the present instruction.
25 If you-all can agree to something, I'll include it; if not, I

1 think what's there now conveys the same idea.

2 MS. CORY: I think, Your Honor, we'd rather stick
3 with what the Court has.

4 THE COURT: Okay. What's next?

5 MS. CORY: Page 14, "Statutory Aggravating Factors."
6 We're asking for an additional paragraph. This was in our
7 original requests for penalty phase instructions. And the
8 final paragraph would read, "Please keep in mind that
9 substantial planning and premeditation refer to the crime of
10 murder, not to any other offenses that accompanied or preceded
11 the murder. Further, the government does not establish
12 substantial planning and premeditation by showing that a murder
13 was premeditated or some small amount of planning preceded it,
14 but the government must show the murder was preceded by an
15 unusual degree of planning."

16 That, I think, is just a correct statement of the
17 law. "Substantial planning," that's what the statute says.
18 It's clearly above and beyond just premeditation and planning.
19 I think-- I don't have the cites right in front of me, but
20 the *Tipton* case in the Fourth Circuit and the *Webster* case in
21 the Fifth Circuit, the government previously cited, both stand
22 for that proposition that it's more than just premeditation
23 and planning.

24 THE COURT: Mr. Neff?

25 MR. NEFF: Your Honor, the Court says at the bottom

1 of Page 13, "The second statutory aggravating factor alleged by
2 the government is that defendant committed the murder after
3 substantial planning and premeditation to cause the death of
4 Guy Luck." That should take care of it.

5 MS. CORY: Your Honor, I think it's correct that, our
6 first sentence there, the Court has already addressed. The
7 reason we are putting it in there again is to deal with what
8 constitutes substantial planning and premeditation, which is
9 the rest of that paragraph. I think the jury needs more
10 guidance on what, at the penalty phase, planning and
11 premeditation means.

12 MR. NEFF: Well, the Court says, "Substantial
13 planning and premeditation means a considerable or significant
14 amount of planning and premeditation." I think that's
15 accurate.

16 MS. CORY: It is accurate. We just think the jury
17 would benefit from more.

18 THE COURT: Well, I will add the first two sentences.
19 And I'll add the first sentence after the words "caused the
20 death of Guy Luck." And then after the word "before" and
21 before "substantial," the word, we'll add, "Further, the
22 government does not establish substantial planning and
23 premeditation by showing that the murder was premeditated or
24 that some small amount of planning preceded it. Substantial
25 planning and premeditation means a significant or considerable

1 amount of planning and premeditation."

2 MS. CORY: Thank you, Your Honor. Next was Page 15.
3 And we had a good bit of discussion about this, I think, with
4 the government, the nonstatutory aggravating factors. We were
5 requesting that in the first paragraph, the final sentence,
6 "This is proper and must be considered" be changed to "This is
7 proper and may be considered."

8 On Paragraph 3 we were asking that that paragraph be
9 deleted in its entirety. I realize Your Honor has set forth
10 already how you intend to change that third paragraph. Our
11 concern is, everything Your Honor says has extra weight
12 because you're saying it. You are pointing the jury to
13 specific things that you believe came in as evidence. Because
14 it comes out of your mouth they are going to give that more
15 weight than if they just go back to the jury room and start
16 talking about the evidence that they heard. And it would be
17 our request that you would simply say, "The government
18 introduced evidence through witnesses pertaining to this
19 allegation. Please understand that the defendant's future
20 dangerousness must be evaluated in the context of
21 incarceration."

22 The thing we're most interested in is letting the
23 jury decide what the evidence was that goes to future
24 dangerousness, rather than the Court's giving them direction
25 in that regard.

1 THE COURT: Well, the Court—and I think this is
2 probably pretty obvious—included this to protect the
3 defense --

4 MS. CORY: Yes, Your Honor.

5 THE COURT: -- so that the jury did not just have
6 free rein, for example, to conclude that the defendant was a
7 bomb-maker and would be making bombs while he's in prison. If
8 the defense is not concerned about the possibility of the jury
9 looking at facts other than the facts introduced in evidence or
10 introduced during the sentencing phase, the Court will take it
11 out.

12 What the Court could then do is just give the
13 government a chance to list its statutory or nonstatutory
14 aggravating factors, just as it's doing with the mitigating
15 factors, and the Court would not make any comment at all
16 except to say, "The government has alleged certain things, and
17 argues that it has introduced evidence to support them, and
18 here is a list." And then the defense mitigating factors and
19 the nonstatutory aggravating factors would be treated the
20 same. And then the Court would not be commenting on whether
21 the evidence supports it or not.

22 MS. CORY: Your Honor, that actually feeds into our
23 next request, which is that Your Honor state one by one what
24 the 35 mitigating factors are in the instructions, for the same
25 reason that when Your Honor tells the jury what the aggravating

1 factors are it has special weight because you told them. If
2 you omit telling them what the mitigating factors are, they are
3 necessarily going to give them less weight than if Your Honor
4 were to include them in the instructions. So our request is
5 that if you are going to give the aggravating factors in your
6 instructions, you also give the mitigating factors in your
7 instructions.

8 THE COURT: Mr. Neff, would you have any problem with
9 just the Court submitting a list to the jury with the
10 government's alleged aggravating factors and whatever proof you
11 think has been submitted to support them?

12 MR. NEFF: Well, let me make sure I understand the
13 Court -- what the Court's asking. You mean that in doing so
14 you would take out this paragraph the defense has asked you to
15 take out, or at least a portion of it?

16 THE COURT: The Court would take out the second full
17 paragraph, the third full paragraph, the fourth full paragraph,
18 and the Court would have some language similar to what the
19 Court has for the defense, that "The government has alleged
20 certain nonaggravating factors, it contends it has introduced
21 evidence to support them, and here is a list of them."

22 MR. NEFF: You would propose doing that in the
23 special verdict form, Judge?

24 THE COURT: Yes.

25 MR. NEFF: As opposed to here?

1 THE COURT: Yes.

2 MR. NEFF: No, that's fine.

3 THE COURT: And the government would put in the stuff
4 about remorse and all these other things, so its list may be 35
5 or 40 also.

6 MS. CORY: Your Honor, those factors that the
7 government has alleged that do not meet a minimal evidentiary
8 standard, I think, cannot be submitted to the jury. The burden
9 that's on the government is entirely different from the burden
10 that's on the defense. They have proof beyond a reasonable
11 doubt. We have asked for a directed verdict as to certain of
12 the statutory aggravators. The Court has, for instance,
13 decided on the pecuniary gain. So some of these factors for
14 which there is no evidence should not go to the jury when it's
15 an aggravating factor. The defense's burden is much, much
16 lower. And so we would not agree to just a wholesale listing
17 of those statutory aggravators or nonstatutory aggravators
18 alleged by the government for which there was no proof.

19 THE COURT: Well, assuming that they confine
20 themselves to things they think there is proof on and they come
21 up with a list, there's probably going to be more than what the
22 Court has here. Do you have any objection to that, then?

23 MS. CORY: Your Honor has put me between a rock and a
24 hard place. And if I could consult with my counsel for just a
25 moment, because there -- I mean, there are certain things about

1 the way you're addressing the nonstatutory aggravators that I
2 think are very helpful to the defense.

3 THE COURT: As the Court said, the Court did this to
4 protect the defendant. And if the defendant does not want that
5 protection, then that's fine. We can do it in some other way.

6 MS. CORY: Well, Your Honor, we certainly don't want
7 the government to be able to allege aggravators for which there
8 is no evidence.

9 THE COURT: Remorse, for example, the Court is not
10 going to include anything at all on remorse. I think the
11 government, though, probably would like to have the jury check
12 off on whether there has been a showing of remorse and some
13 other things. Now, they can argue that. And I think there has
14 been some evidence to allow them to argue that.

15 MS. CORY: Well, under the options we have, I would
16 say I would rather stick with Paragraphs 2 and 3 the way Your
17 Honor has them. But I still think we should be allowed to
18 present to the jury, through Your Honor's reading, our
19 mitigating factors as part of the instructions; otherwise, it
20 gives too much weight to the government's aggravating factors.

21 THE COURT: That was the reason, as I said before,
22 what the Court had planned to do was to do the same thing with
23 the defense mitigating factors, assuming there would be four or
24 five, maybe as many as ten, and the Court was going to go
25 through them and summarize the evidence, just as the Court did

1 with the government's. And that was what prompted the request
2 that they be consolidated. But 35 is too many, and it's going
3 to be difficult for the Court to articulate the evidence that
4 supports some of them. The Court has given the defense the
5 benefit of the doubt in allowing them to go to the jury, but
6 the Court would have a difficult time identifying specific
7 information or evidence that supports some of them.

8 The Court also didn't want to be in a position of
9 saying, "Well, you may consider the defendant's youth and the
10 defendant's home development, and the evidence that supports
11 this is X, Y, and Z," but then not make a comment about
12 others, because then it would look like the Court was
13 approving some and saying the others did not have any merit.
14 The Court did not want to do that, either.

15 MS. CORY: No, Your Honor. And what we're simply
16 asking for in the instructions is that the Court read what the
17 defense says the mitigating factors are, not marshaling the
18 evidence for us, which we will do in argument.

19 THE COURT: How about if the Court just read the
20 headings? I think there are about ten of those.

21 MS. CORY: Well, Your Honor, reading the headings is
22 better than not reading anything at all. And I don't want to
23 belabor this point, but I think Your Honor underestimates the
24 importance of what's said from the bench during the
25 instructions. And the jury needs to hear that from you so that

1 they know they are to consider each of the mitigators.

2 THE COURT: Well, unless there is an objection from
3 the government, then, the Court will add each one of the
4 headings with the exception of "Execution Impact."

5 MR. NEFF: Wait a minute, Judge. Add-- Do it
6 instead of listing the 35, or --

7 THE COURT: Well, on Page 17, the Court says, in the
8 third paragraph, "Defendant's attorneys have included in their
9 arguments a number of what they allege to be mitigating
10 factors. The Court will provide the complete list for you in
11 the verdict form. The defense has alleged the following
12 categories of mitigating factors. They've also discussed these
13 in greater detail in their arguments. The Court will include
14 this complete list for you in the verdict form," something
15 along those lines.

16 MR. NEFF: Are we then going to be allowed to list
17 the specific pieces of proof that we think support the specific
18 aggravating factors alleged, Judge?

19 THE COURT: I don't think that was Ms. Cory's
20 request. I think she has withdrawn that.

21 MS. CORY: I think Your Honor's correct.

22 MR. NEFF: Well, I mean, it seems to me, Judge, in
23 order to be consistent, if we're going to give the headings or
24 overall mitigating factors that the defense is alleging and
25 then we're going to set out specific pieces of evidence that

1 the defense thinks -- even when there really isn't any evidence
2 that supports any of them, the defense thinks support the
3 mitigation headings, then obviously I think the United States
4 should be allowed to submit a list which supports the
5 aggravating factors. Now, I understand we're held to a higher
6 standard. The Court is instructing the jury as to that. And
7 obviously we would submit what we propose ahead of time. But
8 it doesn't seem fair to my client that the defense gets to list
9 all the things that they think support their allegations but we
10 don't get to list ours.

11 THE COURT: Well, the law in this area is unfair to
12 the government, it's stacked in favor of the defendant, and I
13 think this is one of those instances where that's true.

14 MR. NEFF: I understand, Judge.

15 THE COURT: So the Court will list the categories.

16 MS. CORY: Your Honor, one other item on Page 17.
17 We're asking for a small addition to the final paragraph. On
18 Line 2, where the Court says "background or character," we're
19 asking for the additional phrase "background or character or
20 any relevant circumstance" in referring to mitigating factors.
21 And, here again, I think it's on Page 10 of my comments.

22 MR. NEFF: Page?

23 MS. CORY: Page 10.

24 MR. NEFF: Page 10.

25 MS. CORY: No, no. I'm sorry. Scrap that. I don't

1 know what page it's on.

2 MR. NEFF: Where are we? What page?

3 MS. CORY: It's Item Number 16 --

4 MR. NEFF: Okay. Got it.

5 MS. CORY: -- on my comments. We're asking for two
6 additions, one is just the addition of the phrase "any other
7 relevant circumstance," and also the change in the last line
8 from "you are free to consider" to "you must consider," because
9 I think that the case law is clear, as we said earlier, that
10 the jury must consider the mitigating factors. They are free
11 to reject them, they are free to give them any weight they
12 want, but they are not free to ignore them.

13 THE COURT: Mr. Neff?

14 MR. NEFF: Well, Judge, as to the first thing,
15 "background or character or any relevant evidence," didn't we
16 talk earlier about the fact that mitigating factors relating
17 specifically to the sentence in the case, and not to the
18 underlying crime? I'm afraid that's not-- If the Court's
19 going to do that, I don't know that that's specific enough. I
20 don't know why we would make any changes to it. It seems fine
21 to me.

22 As far as the second thing that Ms. Cory suggests,
23 again, I mean, you know, obviously I asked the Court to change
24 things from "must" to "may," and the defense has asked the
25 Court to change things from "must" to "may" and "may" to

1 "must." I think we should be consistent. I mean, if the
2 Court is going to make the proposed changes that Ms. Cory
3 talks about in terms of they may consider things aggravating
4 factors, then the Court, I think, should be consistent and say
5 they may consider whatever mitigating factors that the defense
6 alleges.

7 THE COURT: Why don't we just use the word must,
8 then, in both instances, then.

9 MR. NEFF: That's fine.

10 THE COURT: Ms. Cory, what's next?

11 MS. CORY: Page 18 --

12 THE COURT: The Court will take a look at that
13 "background, character, relevant evidence." But the second
14 part the Court will do. What's next?

15 MS. CORY: Page 18, first paragraph, we're asking the
16 Court to revise the beginning of that paragraph to read, "Once
17 you've decided upon the aggravating and mitigating factors
18 present in the case, the law requires you to (1) decide whether
19 you are unanimously persuaded beyond a reasonable doubt that
20 the aggravating factors proved outweigh the mitigating factors,
21 and (2) if the aggravating factors do outweigh the mitigating
22 factors, decide whether you are unanimously persuaded beyond a
23 reasonable doubt that the aggravating factors proved so
24 outweigh any mitigating factors that justice cannot be served
25 absent a sentence of death."

1 And then in Paragraph 2 of that same page, we're
2 asking for an additional sentence in that second paragraph,
3 "Keep in mind, however, regardless of your findings with
4 respect to aggravating and mitigating factors, you are never
5 required to vote for a sentence of death."

6 And that sentence, Your Honor -- there is a
7 significant amount of case law supporting that being used as
8 an instruction. One of the cases that we cited, *United States*
9 *v. Haynes*, is a Western District of Tennessee case in which
10 the judge did an excellent job of outlining why that is a
11 proper instruction to give.

12 THE COURT: How does this differ from what the first
13 paragraph says already?

14 MS. CORY: How does our -- our Comment 17, how does
15 that paragraph differ from your first paragraph?

16 THE COURT: Yes. We're telling the jury that after
17 they have made their findings regarding aggravating factors and
18 mitigating factors they then have to weigh them against each
19 other.

20 MS. CORY: Your Honor, I do not think that your
21 paragraph is an inaccurate statement of the law. My concern
22 with the jury is, it becomes very confusing, and they're
23 switching from the decision whether he is death-eligible to the
24 decision of weighing aggravating and mitigating factors, and
25 the fact that they are really making two separate

1 determinations in the weighing process. They've got to weigh
2 the aggravating and mitigating factors, but once they decide
3 the weight, then they have to decide beyond a reasonable doubt
4 whether those aggravating factors outweigh any mitigator so
5 that they are required to impose the death penalty. And what
6 follows on that is, the law is pretty clear that even when
7 they're through with all of this, if they still have a sense
8 that they should not impose the death penalty, they do not have
9 to do that.

10 This is not a case -- a situation in a death penalty
11 case where the jury is following the Court's instructions,
12 one, two, three, four, five, and then they add it all up and
13 it's life or death. It's important for them to understand
14 that they are engaged in a very delicate weighing process, and
15 when it's all done, in the end, if they still aren't
16 comfortable with death, even if it looks like it adds up to
17 that, they don't have to impose it.

18 THE COURT: Mr. Neff?

19 MR. NEFF: Your Honor, with regards to Paragraph 1,
20 I'm more confused by Ms. Cory's suggestion than I am by the
21 Court's. I think the Court's instruction is clear on that and
22 it's accurate. As far as the Paragraph 2 addition, I don't see
23 the need to add that. I think that's probably-- I think
24 Ms. Cory is right that regardless of their findings with
25 respect -- they're never required to vote for a sentence of

1 death, but that that's inherent in the instructions anyway.

2 THE COURT: I don't see any distinction between what
3 the Court has in its first paragraph and what the defense
4 proposes. I think what the Court has is a lot clearer and easy
5 to understand than what the proposal says. What the proposal
6 says is that they must weigh the aggravating factors against
7 the mitigating factors and then they have to decide whether
8 aggravating factors outweigh the mitigating factors sufficient
9 to justify a sentence of death. And I think that's the same
10 thing that the first paragraph says except in somewhat simpler
11 terms.

12 MS. CORY: Your Honor, I would say that our Item 19
13 of the two items dealing with Page 18 is by far the more
14 important, because we, I think, have a real risk with a jury
15 thinking that this is a simple adding-and-subtracting
16 procedure. And it is so important for them to know that if --
17 even if it adds up to death, they don't have to do that.

18 THE COURT: The Court will add, then, the "Keep in
19 mind" language to the end of this instruction, then.

20 MS. CORY: Thank you. Thank you, Your Honor. All
21 right. Our next item, going to the special verdict form, we --
22 our Item 20, we had requested that the Court add a title to
23 each question to clarify, I think, for the jury what each
24 question pertains to, so that Question 1 would be entitled "Age
25 of the Defendant," Question 2 would be "Requisite Mental

1 State," Question 3 would be "Statutory Aggravating Factors,"
2 Question 4 "Nonstatutory --"

3 THE COURT: Any objection, Mr. Neff?

4 MR. NEFF: No, Your Honor.

5 THE COURT: Okay. We'll include those headings,
6 then.

7 MR. NEFF: Obviously, Judge, I do object-- Going
8 back to my previous objection, I do object to Item 19 on
9 Ms. Cory's proposal, because, our position is, that sentence
10 should be taken out entirely. So, just to be clear, I am
11 objecting to that --

12 MS. CORY: Yes.

13 MR. NEFF: -- but I don't object to what she has
14 there.

15 THE COURT: I think we said we would take this under
16 consideration. I don't recall whether it concerned a legal
17 issue or something else. But I think the Court said it would
18 look at this and make a decision.

19 MR. NEFF: Yes, sir.

20 MS. CORY: But we all agreed it was supposed to say
21 "no possibility."

22 MR. NEFF: Yes, if the Court leaves that in.

23 MS. CORY: Our final request in regard to the verdict
24 form is that the Court give the jury a third option, like
25 "Death by unanimous decision" or, "After all reasonable

1 efforts, we are unable to come to a unanimous decision on a
2 sentence," and then their understanding that the result will be
3 that Mr. Taylor be sentenced to life imprisonment.

4 THE COURT: I think that relates to the issue that
5 came up earlier the Court said it was going to look at.

6 MS. CORY: Yes, Your Honor. Finally I have a note
7 here-- A lot of the jurors did take notes, and we asked the
8 Court to give the standard instruction for the jury in regard
9 to their notetaking.

10 THE COURT: The Court will do that, then.

11 MS. CORY: I think that covers ours.

12 THE COURT: It's after 12:00 now. So the Court
13 proposes to bring the jury in and excuse it for lunch. Before
14 we do that, why don't we decide how much time we're going to
15 take up with closing arguments.

16 MS. CORY: If the next thing when we reconvene is
17 going to be closing arguments, I would like at this point to
18 ask again, you know, to reiterate our request for a directed
19 verdict in the case, for all the reasons that we set before the
20 Court after the close of the government's proof.

21 THE COURT: The Court having considered the evidence
22 that has come in during this phase of the case, along with the
23 applicable legal standard for the evidence, the Court will deny
24 the defendant's motion.

25 Mr. Neff, how much time would you and Mr. Poole like

1 for closing arguments?

2 MR. NEFF: Your Honor, an hour total, 31 and 29
3 split.

4 THE COURT: Okay.

5 Ms. Cory, are you speaking for the defense?

6 MS. CORY: Your Honor, I'm sorry, I was distracted.

7 The question was the amount of time?

8 THE COURT: Yes.

9 MS. CORY: And what was the --

10 THE COURT: They wanted an hour.

11 MS. CORY: An hour?

12 THE COURT: For both sides?

13 MS. CORY: Your Honor, I think an hour would suffice
14 for us as well. Mr. Bill Ortwein is doing closing argument.

15 THE COURT: Okay. We'll give each side an hour,
16 then.

17 And would the government like a warning before its
18 first argument --

19 MR. POOLE: I would. Two minutes, please, Your
20 Honor.

21 THE COURT: So at the 29-minute point, then, the
22 government will get a warning.

23 Ms. Cory, would the defense like a warning before
24 their time expires?

25 MS. CORY: Yes, Your Honor, ten-minute warning.

1 THE COURT: Okay. So at the 50-minute point, then,
2 the defense will get a warning.

3 Okay. Are we ready for the jury?

4 MR. CLEMENTS: Your Honor, could I? (Indicating.)

5 THE COURT: Yes, you may.

6 MR. CLEMENTS: Just to protect the record, the motion
7 I filed to dismiss for racial discrimination and
8 disproportionality --

9 THE COURT: Yes.

10 MR. CLEMENTS: -- I got the Court's order today, and
11 memorandum. But for the record, I'd like to renew that, for
12 appellate purposes, to make sure that I have not waived it.

13 THE COURT: Very well.

14 MR. CLEMENTS: Thank you.

15 THE COURT: Let's bring the jury in.

16 (The jury entered the courtroom, and the proceedings
17 continued as follows:)

18 THE COURT: Please be seated.

19 Ladies and gentlemen, you may want to know that
20 since you left we all have been present here in the courtroom
21 working through things, and we have walked all the way through
22 the instructions. They will not be nearly as long as the
23 instructions during the first phase. So we've taken care of
24 all of the things we needed to do now.

25 The next phase is for you to hear the closing

1 arguments of the attorneys. In view of the hour, though, I'm
2 going to release you for lunch. And I'll ask you to come back
3 at 1:30. And then you'll hear the government start with their
4 argument, then the defense, and the government rebuttal, after
5 which the Court will give you the charge. So the jury is
6 released for lunch, and we'll stand in recess.

7 (Luncheon recess.)

8 THE COURT: Please be seated.

9 Mr. Poole, will you open for the government?

10 MR. POOLE: I am, yes, sir.

11 THE COURT: Proceed.

12 MR. POOLE: Thank you.

13 We are finally to the portion of the trial where you
14 will soon determine the sentence for Mr. Rejon Taylor. We
15 obviously started almost two months ago, on August 26, when
16 you guys came in for jury selection. And we went through, as
17 you know, a long process in selecting you as the jurors in
18 this case, and then went through the guilt/innocence phase and
19 the long process of putting on evidence, arguing that evidence
20 to you. And you made your decision on Mr. Taylor's guilt, and
21 that is a decision that you need to remember. The facts and
22 the evidence that were involved in the first part of the
23 phase -- first part of the trial are relevant now, and you can
24 rely on them, and should rely on them, in making this
25 important decision at this juncture.

1 As the Court will tell you, and as we've told you
2 throughout, in order to put the death penalty on the table, in
3 order for you to consider the death penalty, the government
4 must prove to you beyond a reasonable doubt one statutory
5 intent factor, that Mr. Taylor intentionally killed Guy Luck,
6 or that he intentionally inflicted serious bodily injury that
7 resulted in the death of Mr. Luck, or that Mr. Taylor
8 performed an intentional act to take the life of Mr. Luck, or
9 used lethal force, that he intentionally participated in an
10 act contemplating Mr. Luck's life would be taken, and that he
11 was one of the participants in the offense, and that Mr. Luck
12 died as a result of his actions, or that the defendant acted
13 with intentional reckless disregard for his life -- for
14 Mr. Luck's life.

15 Your guilty verdict in this case has already
16 indicated that the defendant had the requisite intent.
17 Remember, when you found the defendant guilty of the four
18 charges, one of the things you considered was malice
19 aforethought and whether or not the defendant acted with
20 reckless disregard for Mr. Luck's life. And the evidence
21 showed, and you found, that he did do that. If one of these
22 intent factors is proven beyond a reasonable doubt to you,
23 that is enough. And the Court will tell you that.

24 Let's talk about the defendant's intent. Despite
25 what he said in his unsworn, noncross-examined allocution to

1 you, this was not, as he said, a costly mistake. This was an
2 intentional act of the defendant. He did not accidentally
3 fire three shots into Mr. Luck, including one into Mr. Luck's
4 mouth. He intentionally took the gun that he brought that
5 morning to the crime, the loaded gun that he brought from his
6 house, and turned around and fired it into Mr. Luck three
7 times. This was not some haphazard accident. This was not an
8 action that was without thought. This was not an action that
9 was just someone firing randomly as many times as possible.
10 How do we know that? Look at the gun itself. The defendant
11 fired three shots. There were three unspent shells that did
12 not fire still in the gun when he left. He stopped firing
13 after he put one in the victim's mouth.

14 Remember the proof that you heard from the defense
15 proof here in the sentencing phase, from Dr. Cunningham, based
16 on his interviews with the defendant's family, the defendant
17 learned how to use a gun from his father Johnny Taylor at a
18 very young age. The proof from the defense was, the
19 defendant's father was always going in and out of the house
20 with a gun, that he taught the defendant and his brother to
21 shoot. This was a man who knew how to handle firearms.
22 Plus—use your common sense—you don't accidentally shoot
23 someone three times, including once in the mouth. He
24 intentionally did that after he intentionally drove over two
25 hours to get to the spot where he did that. This was not an

1 accident. It was an intentional act by the defendant.

2 Once you find the government has proven at least one
3 of these intent factors—and as I said, your guilty verdict
4 already demonstrates that that fact has been proven to you
5 beyond a reasonable doubt—we will have to prove one of two
6 statutory aggravating factors: Death during the commission of
7 another crime; that Mr. Luck was killed by the defendant
8 during the defendant's commission of another crime or the
9 immediate flight thereof, from kidnapping. Once again, your
10 verdict, proven beyond a reasonable doubt, was that the
11 defendant is guilty of kidnapping; I don't think there is any
12 reasonable argument -- that Mr. Luck died as a result of the
13 defendant kidnapping him. This fact is before you, and it has
14 been proven.

15 Let's talk a little bit about that kidnapping. It's
16 been a few weeks since you heard that proof. Remember the
17 background of the defendant's relationship, if you want to
18 call it that, to Mr. Luck. He had been stalking this man and
19 victimizing this man for over a year. Remember Joey Marshall
20 told you that a couple of years before the murder, the
21 defendant and he started stealing mail from people's houses.
22 They'd go by and find a house specifically that had no one
23 there. They wanted mail piling up. They wanted to be able to
24 just take the mail, not go in the house, not meet with any
25 people, just be able to steal mail and try and steal

1 identities, try and steal credit cards. This progressed.
2 About a year after that, they started going into houses to
3 steal more information about their identity victims.
4 Remember, they're still looking at this point in time for no
5 one to be home, no cars in the garage. Go at a time when
6 someone's not there. The alarms are always on, Mr. Marshall
7 told you. They would cut the alarm. They would get in the
8 house. And they weren't even looking to steal money,
9 necessarily. Obviously they would take it if they found it.
10 But they were looking to steal information. They wanted a
11 bigger score. They were thinking down the road. They wanted
12 to get credit cards and other information that they could use
13 to make more money, other than just a simple break-in.
14 Remember, Mr. Marshall told you about the fact that they
15 targeted Mr. Luck, five or six times they had been in his
16 house. The defendant found it. He drove around and showed it
17 to them. They went in time and time again, stealing from
18 Mr. Luck. It went beyond that with Mr. Luck. They stepped it
19 up from stealing mail to burglarizing the house.

20 The defendant stepped it up even farther. Remember,
21 he was following Mr. Luck to his place of employment. He
22 actually ate in the Violette restaurant, Mr. Luck's
23 restaurant. He knew Mr. Luck's patterns. He knew Mr. Luck
24 had another house nearby that he was fixing up. And,
25 remember, he took the defendant Joey Marshall to that house

1 and said, "This is where Guy lives."

2 These weren't friends. These weren't acquaintances.

3 He was on a first-name basis because he knew him so well from
4 following him around and stalking him. That's the proof
5 before you. He talked about-- The defendant told
6 Mr. Marshall-- Months before this happened, they talked about
7 robbing Mr. Luck. And then as we come up on August 6, 2003,
8 remember, the day before, the defendant said, "We should rob
9 Mr. Luck." Mr. Marshall couldn't do it that day. They put it
10 off until the next morning. Remember then the defendant,
11 along with Sir Jack Matthews, his buddy, show up and pick
12 Mr. Marshall up with loaded guns in the car, ready to go do at
13 least a robbery. What did they not have in that car? Masks.
14 Anything to hide their identity.

15 There is no proof, as far as Mr. Marshall was
16 concerned, about anything other than a robbery. The defense
17 will point that out to you. He thought they were just going
18 there to rob. But the defendant is the one who led this. The
19 defendant is the one who showed up with the loaded guns. The
20 defendant is the one who brought the robbery kits, the gloves,
21 and the guns, but no masks. The defendant was the driving
22 force behind this. We'll talk in a minute about what actually
23 happened and whether or not your common sense tells you that
24 the defendant just wanted to rob this man or whether or not he
25 had more in mind.

1 They go to the house. Remember, Joey Marshall
2 talked about at first he and Sir Jack Matthews went up to the
3 house and they were supposed to jump on the victim when he
4 came out of his house that morning. All he was going to do is
5 go to work. This is a Wednesday morning in August. He's just
6 going to go to work. And he's got Joey Marshall and Sir Jack
7 Matthews waiting for him outside his house. But Joey
8 chickened out, for lack of a better term, as the evidence
9 showed. And it happened again at the escape. You heard the
10 testimony, and have from various sources, about how
11 Mr. Marshall -- I believe it's even in the letter—we'll talk
12 about Mr. Uhuru's letter that the defense put in—that Joey
13 Marshall called off the first attempt, he was scared. It
14 would have worked then, Mr. Uhuru says in his letter.

15 Well, same thing on August 6, 2003; Mr. Marshall
16 can't go through with it. He goes back to the car. Sir Jack
17 comes back to the car. Sir Jack says, "I'll do it. I'll go
18 on my own. I'll take it." Goes up and hides under the
19 victim's car. Remember that? The defendant and Joey Marshall
20 drove around a little bit. This is when Ms. Gallant, the
21 neighbor, saw the car driving around. She wrote down the
22 license plate, called the police. One of the ways this Impala
23 was identified later on was that she had seen them turn around
24 from her driveway, very steep driveway, no business being in
25 there, and that drew her attention to it.

1 So the defendant and Joey Marshall are driving
2 around while Sir Jack Matthews takes the victim at gunpoint
3 into the house. Remember, he motions to them to come on. And
4 they see-- Joey Marshall told you he saw Mr. Luck and Sir
5 Jack Matthews in the driveway. The defendant gets out and
6 goes in the house with Sir Jack and Guy Luck. Joey Marshall
7 keeps driving around. He's driving around in that purple
8 Impala. Joey Marshall didn't go in the house. So at that
9 point we don't know what happened in the house. But we then
10 know, according to Mr. Marshall, that the van left; Rejon's
11 driving it; and we find out that the victim and Sir Jack are
12 in the back. They're driving to Chattanooga during this
13 kidnapping. At this point obviously Mr. Luck has been put in
14 the van at gunpoint. He's not coming here voluntarily.

15 Remember, as Mr. Neff pointed out to you on closing
16 argument, there was some indication at some point that PIN
17 numbers for credit cards were the goal of this heist or this
18 robbery. But the facts show that that wasn't the goal. Think
19 about, from Atlanta to Ooltewah, how many ATMs and other
20 places where you could use a credit card or a PIN number,
21 banks, they passed. They didn't stop. They go-- Remember,
22 they stop on the side of the road and the defendant comes back
23 and he talks to Joey Marshall and he says, "Hey, that guy who
24 took warrants out on me, this is him. I saw some paper work
25 in his house."

1 We know that that paper work existed. And we'll
2 look at the exhibit again here in a few minutes. But we know
3 that that paper work from Matt Wolfe, Rockdale County
4 Sheriff's Office, was in the victim's house. Remember Marty
5 Dunn from the Hamilton County Sheriff's Office talked about
6 going up that night and climbing through the window to get in
7 and they went in and the place had not been disturbed and
8 there was paper -- he didn't take the papers, but he did take
9 a picture of the Rockdale County report that says, "The
10 thieves have been identified." You heard a reference this
11 morning on the phone call from the defendant—"The thieves
12 have been identified."

13 Now, remember, there was some confusion about
14 Rockdale County versus DeKalb County. And there was an arrest
15 warrant out from DeKalb County, involving Mr. Westlake. This
16 was another arrest warrant, for Matt Wolfe. He talked about
17 how the fugitive squad had gone out to arrest the defendant
18 but they had not arrested him on the Rockdale County warrants.
19 And Joey Marshall told you about how they knew there were
20 warrants out for Rejon Taylor but they didn't know who had put
21 them out.

22 Stops on the side of the road and says, "This is the
23 guy who took the warrants out"—backed up by the physical
24 proof, backed up by the letter in the house—and then asked if
25 Mr. Marshall needs any gas. Remember, Mr. Mar-- they go --

1 Mr. Marshall goes and gets gas with Reba Taylor the
2 defendant's mother's gas card. And the defendant, driving the
3 van, doesn't go into the gas station, doesn't pull off the
4 road. He stays on the on-ramp. He waits until Mr. Marshall
5 comes back with the gas. They drive on to Chattanooga, really
6 past Chattanooga, into Ooltewah. And you watched, remember,
7 the video from about the Tennessee state line, and just how
8 long that portion of the ride was.

9 Now, remember they've come from Buckhead, Atlanta,
10 Atlanta, Georgia. Mr. Luck's been in the back of the van the
11 whole time with Sir Jack Matthews. Even before they got to
12 the part where you saw the video, they drove out into the very
13 rural area in Collegedale and circled several times, two or
14 three times. They didn't just stop and let him out. They
15 circled two or three times. No doubt that they crossed state
16 lines. As your verdict has shown, he was guilty of
17 kidnapping. And no doubt that Mr. Luck died as a result of
18 the defendant's actions. Remember they circled, they circled,
19 and then—and you can see from the video—there is nothing but
20 trees on one side and kind of a creek on the other side. The
21 car -- the van almost runs off into the creek. And we know
22 from what Sir Jack Matthews yelled when he got back in the
23 car, about how the victim charged them, or tried to charge
24 them, and, quote, unquote, the defendant "busted" him.
25 Remember Sir Jack Matthews' yelling that when they got in the

1 car? "He busted him. He busted him. You a soldier," talking
2 about Rejon Taylor, "You a soldier."

3 So we know that the victim charged them. They
4 killed him. The defendant killed him. No doubt about it.
5 Sir Jack Matthews shot him. And Sir Jack Matthews told you --
6 and I don't know how much was true that he said from that
7 witness stand. That's for you to determine. And your verdict
8 has shown. But one thing he said I don't think will be
9 disputed by either side was that he would have kept shooting
10 if he could. Sir Jack Matthews. His gun jammed. The
11 defendant's buddy, Sir Jack Matthews. We'll talk about that.
12 But the defendant shoots twice, once hitting Sir Jack, after
13 it went through the victim, and shoots a third time in the
14 victim's mouth, killing him. Then they leave. Remember, the
15 defendant-- And Mr. Charlie Pac and other first responders
16 were there fairly quickly on the scene. The victim managed to
17 even get out and say, "They robbed me, they robbed me," before
18 he lost the power of speech and eventually died at Erlanger.
19 But the defendant had the presence of mind to turn down the
20 license plate on the back of the Impala as he got in.
21 Remember we talked about how you got gas in the back of that
22 car by putting the license tag down? And the defendant, as
23 Sir Jack is yelling, "You shot him, you're a soldier," they're
24 getting back in and telling Joey Marshall to drive, had the
25 presence of mind to put down that tag.

1 They drove back. They hit traffic, you'll recall,
2 and had to stop. And the defendant had the presence of mind,
3 once again, because he's got Sir Jack Matthews laying in the
4 back bleeding, to get out, get some blankets, and cover up
5 Mr. Matthews so the police or some trucker or someone else
6 doesn't see this man laying in the back of the car.

7 We talked about the commission of another crime. As
8 you've already shown by your verdict, the evidence is
9 overwhelming.

10 They go back. Sir Jack Matthews is taken to the
11 hospital, while Mr. Marshall, after-- First of all, the
12 defendant's dropped off at his own house. We talked about
13 what the defendant and Mr. Marshall did that afternoon, as
14 Stephanie Belcher has to drive from Atlanta to Chattanooga --
15 actually she couldn't drive after she heard the news that Guy
16 Luck was in the hospital. Remember, a friend had to drive
17 her. Drove her up here to Erlanger. And she got here just a
18 little too late. Remember Stephanie Belcher talking about how
19 she talked to the nurse at Erlanger, and they didn't want to
20 give out any information, but Ms. Belcher had a background in
21 nursing and was able to convince the nurse that she could
22 handle it. And so she's kind of getting a play-by-play, as
23 she drives up, on her fiancé, her business partner, her best
24 friend, dying in Erlanger hospital. And she gets up here, not
25 in time to say good-bye to Mr. Luck, but just in time to

1 identify his body, at about the same time that the defendant
2 and Joey Marshall and their girlfriends enjoyed a meal at Red
3 Lobster with the victim's money.

4 Remember the proof of the kidnapping. Another
5 statutory aggravating factor—and this will be the only other
6 statutory aggravating factor that you need to consider, or
7 that we will ask you to consider—is substantial planning and
8 premeditation. Rejon Taylor committed the offense, the
9 murder, after substantial planning and premeditation to cause
10 the death of a person.

11 MR. WILLIAM ORTWEIN: Your Honor, I'm going to object
12 at this point. Proof that relates to the murder itself, rather
13 than the kidnapping or carjacking.

14 MR. POOLE: I think that's what I said.

15 MR. WILLIAM ORTWEIN: I think Your Honor will be the
16 proper person to tell the jury what the law is.

17 MR. POOLE: I said to the murder, Judge.

18 THE COURT: He says he's relating it to the murder.

19 MR. WILLIAM ORTWEIN: Well, I didn't have a chance to
20 read what he's put up on the board. As long as that's what it
21 says, that's fine. Otherwise, I think it's a misstatement of
22 the law.

23 MR. POOLE: I said to the murder, Judge. And
24 certainly the jury knows to follow the Court's instructions
25 with regard to the law if I say something different.

1 Substantial planning and premeditation with regard
2 to the murder of Guy Luck by the defendant Rejon Taylor. How
3 do we know that he substantially planned and premeditated?
4 First of all—I think it's in the charge now—you'll remember
5 from your charge before, premeditation, time for cool
6 deliberation, time to think about what you're doing and decide
7 to do it. Premeditation doesn't take a long time. It can be
8 made in an instant. You can decide right away what you're
9 going to do, and then do it, and that's premeditation. If I
10 walk over and grab one of the guns here --

11 MR. WILLIAM ORTWEIN: Your Honor, I would object to
12 that, again. I don't believe that is the law. This is a
13 sentencing hearing where we're talking about substantial --

14 MR. POOLE: I haven't gotten to that part yet.

15 MR. WILLIAM ORTWEIN: -- planning and premeditation.
16 And under this scenario, at the sentencing hearing, I don't
17 believe premeditation can occur in the blink of an eye, under
18 this definition, in a sentencing hearing, which this is, not a
19 guilt/innocence hearing.

20 MR. POOLE: And, Judge, I will demonstrate the
21 difference between premeditation and substantial premeditation
22 if I'm allowed to talk. That's what I was going to do.

23 THE COURT: Ladies and gentlemen, as I've told you
24 previously, the Court is the source of the law here. And the
25 Court will be giving you a definition of what substantial

1 planning and premeditation means. It is proper for the
2 attorneys to discuss the law during their arguments; but if
3 what they say about the law is different from what I say, you
4 must follow what I say.

5 Proceed, Mr. Poole.

6 MR. POOLE: Thank you.

7 Premeditation. If I take one of these guns that the
8 defendant supplied to Sir Jack and himself on August 6th, if I
9 take one of these guns, decide to go over and shoot Mr. Neff,
10 that's premeditation. I've thought about it. I've decided to
11 do it. I've made the decision. I go do it.

12 Rejon Taylor could have killed Guy Luck in his house
13 in Atlanta. He and Mr. Matthews are in there. They've got
14 the same loaded guns they used in Chattanooga. No one else is
15 in there, as far as we know, in Atlanta. But he didn't do
16 that. We talk about substantial premeditation. It's not--
17 We're not talking about he just picked up the gun and walked
18 over and decided right there to kill him. No, he took him out
19 to the van, had Mr. Marshall follow in the Impala, and drove
20 over two hours, into Collegedale, Tennessee, before he killed
21 Mr. Luck. Talking about substantial time to think about what
22 he was going to do.

23 Now, as we've said, Mr. Luck kind of interrupted
24 this plan and attempted to charge one or both of the
25 defendants in the back of the van. And we could tell by how

1 the van went off the side of the road, almost up into the
2 creek, that the killing took place before the end of the trip;
3 the van had not stopped. And you remember how Mr. Marshall
4 testified that the van was kind of weaving over to the side of
5 the road. And you saw where it ended up there, almost in the
6 creek. So I'll submit to you, and I don't think there is any
7 dispute, that we don't know where that van was supposed to end
8 up. We don't know what the end of that plan, the defendant's
9 plan, was. So you can only consider what you know about the
10 facts. But you know that the defendant didn't just kill him
11 in Atlanta. You know the defendant and his buddy Sir Jack put
12 the victim in a car and drove over two hours to a remote
13 location, that they circled around before the killing
14 happened.

15 And what else do we know that's interesting about
16 this ride from Atlanta to Chattanooga? When they stop on the
17 side of the road-- And, remember, the defendant asked Joey
18 Marshall if he needs gas. He does. They go up and--
19 Mr. Marshall goes into the gas station to get gas. The
20 defendant, driving the van, stays on the on-ramp. He was
21 thinking ahead. He's not going to drive the victim to a gas
22 station, where people are, where he might be able to yell in
23 the back of that van or might be able to get out of the back
24 of that van. He stays out on the freeway where there is no
25 way to get out and yell for help.

1 What else does he do? He gives his mother's gas
2 card to Joey Marshall to get gas on this trip. Think about
3 that. They are there, ostensibly, to rob and steal from this
4 man. They've burglarized him five or six times. They've
5 stolen his identity, as well as many, many others'. They
6 don't pay for anything with their own money. So why do you
7 use your credit card or your mom's credit card during this
8 kidnapping? Why not use one of Mr. Luck's credit cards?
9 Because then there is a trail of Mr. Luck going from Atlanta
10 on his way to Chattanooga. Think about that. If the last
11 time the credit card was used, of Mr. Luck, was in
12 Cartersville on the way to Chattanooga, that's evidence that
13 he was removed from Atlanta or he was not in Atlanta, so maybe
14 if that body is never found somewhere in Collegedale,
15 Tennessee, that would have been a clue to the police as to
16 where to look. Mr. Taylor is thinking ahead. He's paid--
17 And you heard about it in his letters, you heard about it from
18 Dr. Cunningham, how his dad paid for everything. Stolen
19 identities is what they do. They don't pay for anything. But
20 they don't want to be linked in any way -- or they don't want
21 the victim linked in any way to the area in North
22 Chattanooga -- excuse me -- in Tennessee where they were going
23 to kill and dump this body. He used his own credit card to
24 pay for that gas.

25 We know—we've talked about this before—that he

1 brought loaded guns that morning. Three young men going in
2 against one older man who was not expecting them to come,
3 early in the morning on a Wednesday morning, going to work.
4 They didn't need loaded firearms to pull off some sort of
5 robbery, but they were loaded. They weren't wearing masks.
6 They were planning on going in and confronting this man face
7 to face with these guns, but no masks were provided by the
8 defendant. Then of course they drive from Atlanta up into
9 Collegedale. Use your common sense. We know about passing
10 the ATMs. We know about passing the banks. What else were
11 they going to do to this man when they got up here other than
12 kill him? This is not walking across the room and grabbing a
13 gun and premeditating and walking back and shooting somebody
14 in the back room. It's not even walking into his house and
15 shooting him. It's walking in, taking him out in his own car,
16 driving him across state lines, driving him for several hours.
17 Mr. Luck knew he wasn't coming back from that trip. That's
18 why he fought for his life before the defendant ended it.

19 So I submit to you there is enough proof to show
20 substantial planning and premeditation. You can also look at
21 the fact that he tried to escape, and continues to try to
22 escape today, to show that this wasn't an accident, this
23 wasn't happenstance. And this wasn't just a premeditated
24 murder or a planned murder. This was substantially planned
25 and premeditated. There was thought put into this. We know

1 from Mr. Taylor's letter—I'll show it to you in just a
2 minute—that he knew everything about his victims. He didn't
3 do anything without substantial planning. He researched his
4 victims for identity theft, through the computer, and knew
5 everything about them. And he certainly knew everything about
6 Guy Luck. He knew Guy Luck didn't go to the bank after
7 closing down at the restaurant. He knew he brought the
8 proceeds home and went to the bank the next morning; at least
9 that's what he told Joey Marshall. He knew where Mr. Luck's
10 other house was. He'd been following this man for a year, at
11 least. There was definitely substantial planning, substantial
12 premeditation. This was not a random victim. This was a
13 target of the defendant.

14 Nonstatutory aggravating factors or other factors
15 that you can consider in making your decision. We've talked
16 about the escape. I don't know that there is any dispute now
17 that the defendant tried to escape. He, along with Mr. Uhuru,
18 known as J.R.; Steven Szabo, Joey Marshall, Thaddeus Reid, the
19 defendant's mom who tried to help out, attempted to escape
20 from the Hamilton County Jail in 2006.

21 You heard from Mr. Uhuru's own letter that the
22 defense put in that Rejon Taylor took part in this escape and
23 that he handled his business, he kept up his end of the
24 bargain. Joey Marshall let Uhuru down, let J.R. down,
25 remember? He called off the first escape. And he and Reed

1 and Szabo were supposed to grab one of the guards, and nobody
2 did that but Szabo. They were supposed to grab him and throw
3 him into the cell. Mr. Ortwein may talk about this. You've
4 got the letter in evidence that the defense put in. Just
5 because the defense put it in doesn't mean it's a mitigating
6 factor. You evaluate it for what it's worth. Uhuru tells the
7 defendant's mom on several occasions that the defendant did
8 his job, the defendant handled his business on this escape, it
9 wasn't the defendant's fault that it failed.

10 MR. WILLIAM ORTWEIN: Please the Court, I would like
11 to object at least to the caption of this particular slide,
12 which is entitled "Participation in Additional Uncharged
13 Murder, Attempted Murder, or Other Serious Act of Violence."
14 I'd like to ask that it be made a part of this record, because
15 obviously there is no allegation that Mr. Taylor ever
16 participated in additional uncharged murders or attempted
17 murders, and it's prejudicial for him to show that to this jury
18 when there is absolutely no evidence of it, to try to imply
19 that. I'd also like the Court to strike that part of it. And
20 I'd like to ask this particular slide be made a part of this
21 particular record, for the appeal, if any.

22 THE COURT: Mr. Poole?

23 MR. POOLE: Your Honor, we're talking about "or Other
24 Serious Act of Violence."

25 THE COURT: You're not talking about additional

1 uncharged murders or attempted murders?

2 MR. POOLE: We're not talking about additional
3 uncharged murders --

4 THE COURT: Ladies and gentlemen, please disregard
5 this language on this slide that talks about additional
6 uncharged murders or attempted murders. I think that
7 Mr. Ortwein is correct there has been no evidence at all in
8 this case about other uncharged murders or attempted murders on
9 the part of this defendant. So put that completely out of your
10 mind.

11 THE CLERK: You have two minutes.

12 MR. POOLE: Thank you.

13 MR. WILLIAM ORTWEIN: Could I ask that slide be made
14 an exhibit for the purpose of the record?

15 THE COURT: Yes. Yes. The Court grants that.

16 MR. POOLE: So we know about the escape. We know
17 about future dangerousness, that the defendant has attempted
18 this escape once, and that he has shown he cannot "adapt his
19 behavior to societal norms, thereby demonstrating a low
20 rehabilitative potential." What does that mean? It means he's
21 dedicated to a life of crime. And he says it in his own words
22 in that letter he wrote to Silverdale in the last couple of
23 weeks. He's dedicated to a life of crime. He's not worried
24 about what the rules are. He's worried about what he wants to
25 do.

1 He has demonstrated a lack of remorse for his
2 criminal conduct. Lack of remorse. Have we seen any remorse
3 from the defendant? We've seen the letters he wrote where he
4 writes that—can we put the Elmo on now, please?—where he
5 writes that—and this is hard to read, but—"It's like someone
6 killed the President, and I'm being held responsible."

7 Mr. Luck's life was of no value to him. We heard
8 the tape this morning, where his sister is talking about
9 Stephanie Belcher, how can she be a fiancée and business owner
10 and all these things, and the defendant's laughing at her.
11 That's during this trial. This isn't five years ago. He's
12 had five years to think about it, and he laughs after
13 Stephanie Belcher testifies. We've seen absolutely no remorse
14 from this defendant. The defendant talked to you, without
15 being sworn in, without being subject to cross-examination;
16 and two words we never heard from that defendant—"I'm sorry."
17 Not one time has he shown any remorse for the life he took.

18 THE CLERK: That's your time.

19 MR. POOLE: Thank you.

20 THE COURT: Mr. Neff, I see there is a chart being
21 set up. If you'd like to move around the court so you can
22 visualize the chart, you may do so.

23 MR. NEFF: Thank you, Your Honor.

24 MR. WILLIAM ORTWEIN: Ladies and gentlemen-- I'm
25 sorry. I'm being interrupted, as usual, by the U. S.

1 Attorneys.

2 (Brief pause.)

3 MR. WILLIAM ORTWEIN: Ladies and gentlemen of the
4 jury, you have already found guilt. You have already
5 unanimously said Rejon Taylor is guilty. This hearing, this
6 segment of the trial, does not relate to guilt or innocence.
7 That is not an issue anymore. That is not what is before you.
8 What is before you is for you to determine whether Rejon Taylor
9 shall die at the hand of an executioner or die in a prison
10 ward. That's it. You are to make that decision based upon
11 what is known as aggravators, which the United States must
12 prove to you beyond a reasonable doubt, or mitigators, which
13 are not excuses but tend to separate the worse from the worst.
14 Those only have to be proven to you by a preponderance of the
15 evidence, which generally means "more likely than not."

16 So all that you have heard about guilt or innocence
17 really does not apply at this hearing. That's not what it is
18 about. You have already reached that decision. This decision
19 about determining when and how Rejon Taylor shall die will be
20 based upon whether or not you believe the aggravators set
21 forth by the government outweigh the mitigators to the extent
22 that Rejon Taylor is one of the worst of the worst. There is
23 no issue about guilt anymore.

24 You know, of course, I'm lead counsel for
25 Mr. Taylor. And I have had a big burden for the last five

1 years, as well as has Mr. Howell Clements, Lee Ortwein, Leslie
2 Cory, and our chief investigator Roy Cooper. And that burden
3 deals with how do we convey to you, within the confines of a
4 courtroom, restricted by rules of evidence, the type of person
5 Rejon Taylor really is, an individual that one of us has
6 visited with at least once a week for five years. And, you
7 know, it makes it doubly difficult because, being a young
8 human being, staring the death penalty right in the eyeball,
9 Rejon Taylor, like any of us would, has gone through a total
10 shift in emotions day by day, minute by minute, and almost
11 second by second. Being a human being, obviously, like you or
12 I would be, he's terrified. One minute --

13 MR. NEFF: Objection, Your Honor. I don't know that
14 there is any proof about the defendant being terrified.

15 THE COURT: Mr. Ortwein?

16 MR. WILLIAM ORTWEIN: Well, please the Court, I would
17 just say that would be obvious to anybody that's staring the
18 death penalty in the face, dying.

19 THE COURT: Ladies and gentlemen, the attorneys are
20 afforded some leeway in discussing the evidence. If you don't
21 find that the evidence supports their arguments, though, you
22 just should reject their arguments.

23 Proceed, Mr. Ortwein.

24 MR. WILLIAM ORTWEIN: Thank you.

25 An individual goes from the depth of depression to

1 euphoria and highs constantly. And being in that position,
2 they, as any human being would do, say reckless things, write
3 reckless things, which they shouldn't, and which makes it
4 doubly difficult for us to convey to you who the real Rejon
5 Taylor is.

6 What do we know about him, though? Well, we know he
7 was born in Atlanta, and he was a very quiet child, he was a
8 very loving child. You heard from one of his relatives who
9 testified—and you'll have to forgive me; it's been a while
10 back—and she had some physical difficulty, how he came to her
11 house and was crying about it. He obviously had befriended an
12 individual who -- by the name of Mark Patterson, who was older
13 and mentally challenged, and was helpful to him. And you
14 heard from his other relatives about his childhood.

15 He did quit school, and he started a legitimate
16 business. He started a business where he had a van and he was
17 doing car detailing, except you didn't have to go to him, he
18 would come to you. And he got off on the right track. But
19 then the influences of his family, in particular his father,
20 kicked in, as toxic and God-awful as they were, and influenced
21 his life. As Dr. Cunningham said, we all have scripts. Our
22 lives are scripted. For example, for my children, there was
23 no question they would go to high school and finish and that
24 they would go to college and graduate. That was accepted that
25 that's what they would do.

1 Let's talk a minute about what we know about Rejon
2 Taylor and how he came to be the person who committed a
3 God-awful act for which, no matter what he does, no matter
4 what he says, he can never, ever bring solace to the losses of
5 Guy Luck's people or of his own family members, whom you've
6 heard testify, because they lose, also. His father, at 14,
7 killed a first man and was arrested for it. He got out during
8 some time, and he took custody -- or at least Rejon and his
9 brother John went to live with him. And what type of an
10 influence was he on them? What type of-- How did he
11 influence them in their later life? And by the way, as you
12 will recall, Rejon Taylor was conceptualized and conceived
13 while his father was on escape from a Georgia penitentiary.

14 But let's go, again, to the influence. When he was
15 very young-- I forget the age. I think it was ten. I don't
16 remember. You-all will remember how old it was he was. He
17 lived with his father, who was running a major,
18 2 million-dollar ID scam. His father had stacks of money
19 laying around. And what else? Guns. And the guns were
20 laying around the house in case somebody wanted to rob the
21 father of these stacks, huge amounts, of cash. So what did
22 the father do? He taught both John and Rejon how to use the
23 guns. This is the father figure. This is the individual who
24 influenced and shaped Rejon Taylor's life.

25 And of course John, the brother, went on to become a

1 drug dealer, and, by the way, also was found guilty of the
2 AK-47 and the pistol that was introduced earlier that was
3 found in the Taylor homestead. Not Rejon Taylor, but John
4 Taylor was found guilty in a court of law for possessing those
5 guns. Rejon had nothing to do with those.

6 And, you know, I can remember Dr. Cunningham saying
7 very well, of course, his mother worked two or three jobs, but
8 she got a great deal of money from the father. And there were
9 seven drug addicts in the family. And I forget how many of
10 them had criminal records; a bunch of them. And
11 Dr. Cunningham said, you know, it's scary, because here we
12 have a father who is a murderer, a perpetual convict,
13 crime-breaker, and he's lecturing the mother on how to raise
14 the children because he doesn't think she's teaching them the
15 right boundaries. That is scary. That's how Rejon, at an
16 early age, was shaped. That's a part of who he is.

17 You know, all of us' lives are shaped, be it for the
18 good or for the bad. And we're all influenced by our family,
19 for the good or the bad. Ladies and gentlemen, there is one
20 way and one way only that Rejon Taylor would not have become a
21 criminal, and that is if someone, at a very early age, had
22 taken him away from that family and he had been taught to
23 reject every moral value that they had. With that background,
24 Rejon Taylor, without somebody having stepped in and
25 intervened and said, "Wait a minute. What are you doing to

1 this child?" without that happening, he was destined to be
2 seated right there where he is today.

3 We don't all come from level playing fields, ladies
4 and gentlemen. We don't choose our families. We don't choose
5 those who give us values. They're chosen for us. And that's
6 how Rejon Taylor was shaped. So we know a little bit about
7 how he was shaped. We know how he came to be here. We know
8 why he came to be here. We know some of who he is.

9 What is he not, that we know? What is he not?
10 Well, he's not a person who in his past has assaulted other
11 people. He's not a person who has killed somebody else in his
12 past. He is not a person who has raped a child. He's not a
13 person, like Joey Matthews, who quit school to sell crack
14 cocaine, and would not use it himself because he knew what it
15 would do to you, and all -- he didn't care about other people,
16 what he cared about was just making his money. He's not
17 somebody that has a felony record. He has absolutely no
18 history of violence. And we know, ladies and gentlemen, he's
19 not a gangbanger.

20 And let me say to you, it's been a long trial, so
21 what I have done is, I have had parts of the transcript and so
22 forth typed up, because my memory is not the greatest in the
23 world. And let me say this to you, because I'm going to
24 disagree with something with Mr. Poole down the road. If I
25 say something in talking about the facts that you think is

1 wrong, you go by what you remember and not what I say. And I
2 assure you I'm not trying to mislead you.

3 Joey Marshall-- I'm sorry. Yeah, Joey Marshall.

4 "QUESTION: Okay. Now, were you a member of any kind
5 of a street gang?

6 "ANSWER: No, I wasn't.

7 "QUESTION: Was Sir Jack Matthews a member of a
8 street gang?

9 "ANSWER: Not that I know of.

10 "QUESTION: What about Rejon Taylor?

11 "ANSWER: No."

12 So we know he was not a gangbanger out here worrying
13 about somebody getting on his turf or somebody wearing the
14 wrong kind of colors or whatever those people do. So we know
15 that he has not done or is not -- has not committed a lot of
16 the things which make one the worst of the worst.

17 Now, let's talk about this premeditation a minute.
18 And I'm going to go through some transcript because it was a
19 long time ago. But let me say to you, Number 1, that what the
20 government wants you to believe is this, which is a real
21 stretch of the imagination, I would say to you: First of all,
22 that Rejon Taylor decided to kill Guy Luck but he didn't tell
23 Sir Jack Matthews or Joey Marshall, but he had this secret
24 plan and then he wasn't able to carry it out. Now, that --
25 that's their theory and their premise for premeditation.

1 Before we get to the transcripts and the actual testimony--
2 And I wish I had had this typed up. The government keeps
3 talking about the fact that Guy Luck was being followed. And,
4 yes, that's the testimony. But why? If you will recall, the
5 testimony was, because they were thinking about robbing him.
6 And their first plan, which they rejected, was to rob him on
7 his way home. They rejected that plan. What did Joey
8 Marshall testify to about premeditation?

9 "There was no plan to kill Guy Luck, correct?

10 "ANSWER: Yeah.

11 "QUESTION: There was no plan to kill Guy Luck,
12 correct?

13 "ANSWER: Yeah."

14 Then what we have here is what is known as a 302,
15 which is an interview that was done of Sir Jack Matthews by
16 federal agents. Matthews stated the plan of robbing the
17 victim of Guy Jean Luck was discussed between Joey Marshall,
18 Rejon Taylor, and Matthews prior to leaving their
19 neighborhood. Matthews stated the original plan was to rob
20 the victim and dump him off in Tennessee so he would have to
21 get back to Atlanta on his own. Matthews stated they did not
22 ever discuss killing the victim. That's the evidence. So
23 there is specific evidence, ladies and gentlemen of the jury,
24 from two witnesses who say there was no plan to kill him,
25 period, the plan was to rob him. The government wants you to

1 ignore that when they talk about premeditation. And then here
2 is what they base it on. Okay? Here is what they base it on,
3 is a statement -- two things. It's a statement from Joey
4 Marshall. All right? Who said, "He --" talking about Rejon,
5 "He asked me did I need gas. And he also stated he believed
6 Mr. Luck was the guy who took a warrant out on him.

7 "QUESTION: All right. Let's talk about that for a
8 minute. Would it surprise you to know there was never, ever a
9 warrant taken out against Mr. Taylor where Guy Luck was the
10 victim?

11 "Would it surprise me?

12 "Yes.

13 "ANSWER: It wouldn't matter."

14 Now, I want you to remember something else about
15 this theory. You heard from Robert Westlake. Robert Westlake
16 was victimized on an identity theft. Rejon Taylor was
17 arrested. There was a court hearing. Rejon Taylor knew
18 Robert Westlake was a victim. Same type of case as this would
19 have been if Guy Luck had testified against him.

20 "Mr. Westlake, has anybody ever contacted you,
21 intimidated you, threatened you on behalf of Rejon Taylor?

22 "ANSWER: No, sir. No, sir."

23 And it was the same kind of case. What would have
24 made the difference?

25 And then we go back. And let's talk about what they

1 want to base this on. This was Mr. Dunn testifying, the
2 photographer, about this document.

3 "QUESTION: This is a photograph I'm asking about,
4 though, sir. Now, you moved these credit cards so you could
5 get -- see the part, by looking at the document, that thieves
6 had been identified, correct?

7 "Correct.

8 "QUESTION: So but before you moved those
9 photographs, somebody looking at it would not have seen that
10 part of the document, would they, because the credit cards
11 would have covered it?

12 "It covered up part of the name. You could see
13 'thieves,' but you couldn't see by whom, just see the word
14 'thieves' and that's it, 'thieves' and I think 'identified'
15 was there as well. But, there again, I'd have to refer back
16 to the other piece of evidence.

17 "You're not sure, in other words?"

18 What did he see? Obviously it wasn't a warrant, as
19 Joey would have you believe. And by the way, who supplied all
20 of this evidence, ladies and gentlemen, of premeditation? Who
21 supplied it? Joey Marshall.

22 "QUESTION: Now, you're aware that at some point
23 during that time prior to the escape Mr. Taylor knew you were
24 going to testify against him, right?

25 "ANSWER: Yes.

1 "QUESTION: And that you were going to be sitting
2 like you are here today, sit in a courtroom, testify against
3 him in a case where he could be put to death?"

4 Right -- or "Yes" is his answer.

5 "And he never threatened you, did he?"

6 The answer is, "No."

7 Why couldn't he have threatened Joey if he wanted to
8 kill somebody? He's in a cell with him. We're not talking
9 about five years in the pen here, if they're talking about
10 getting rid of a witness. We're talking about the death
11 penalty, dying. And yet he didn't threaten Joey. Once again,
12 Joey Marshall is the person supplying this evidence that
13 you've got to believe beyond a reasonable doubt.

14 Question to Joey Marshall: "All right. And by the
15 way, you've lied to police officers over charges before this
16 ever came about, haven't you?

17 "ANSWER: Yes, sir.

18 "QUESTION: As a matter of fact, you got arrested for
19 making a false statement to police officers, didn't you?

20 "ANSWER: Yes, I did."

21 And this is all about, if you'll recall, when he was
22 first arrested, he got this young lady involved to write him
23 an alibi, and he didn't think it was good enough.

24 "So did you not have her do a different -- new alibi
25 she typed on her computer, signed, and got to you?

1 "ANSWER: Yes, I did."

2 And finally, ladies and gentlemen, "Would you lie--"

3 This is Joey Marshall again, under oath: "Would you lie to

4 not do life in the pen and die?

5 "Would I lie?

6 "Yes, sir. To get out of doing life, dying in the

7 penitentiary, sir?

8 "Absolutely, I would."

9 Beyond a reasonable doubt, ladies and gentlemen.

10 Beyond a reasonable doubt of premeditation. And he's the only

11 one that supplies it, or tries to.

12 Judge, could we have the earphones handed out? I

13 want to play part of a videotape that was introduced into

14 evidence.

15 THE COURT: Ms. Palmer?

16 (Brief pause.)

17 THE COURT: Do you know what exhibit it is?

18 MR. WILLIAM ORTWEIN: Judge, I don't remember the

19 number. The government introduced it, Sir Jack Matthews'

20 testimony. This is a part of it, which I discussed with the

21 government. It would be part of Sir Jack's testimony where the

22 United States, after he made his incredible statement,

23 introduced the videotape of an interview of him prior to court,

24 Your Honor.

25 (Off-the-record discussion.)

Closing Argument - William Ortwein

1 MR. WILLIAM ORTWEIN: Detective Starnes. Candidly, I
2 didn't look up the number. But I think the government
3 understands it is part of an exhibit introduced.

4 (Off-the-record discussion.)

5 MR. WILLIAM ORTWEIN: It would be in the 800s,
6 according to the government, 802, 803, maybe, somewhere in that
7 neighborhood.

8 (Brief pause.)

9 THE COURT: Proceed.

10 MR. WILLIAM ORTWEIN: May I proceed?

11 THE COURT: Yes, proceed.

12 (The tape was played in open court, and the
13 proceedings continued as follows:)

14 MR. WILLIAM ORTWEIN: They were stopping the car to
15 let him out, is what Sir Jack says on that videotape.
16 Remember, this was before he came in and told whatever he told
17 the Court. Stopping the car to let him out, which fits right
18 back into what he said earlier. And let's-- You know, I don't
19 remember--

20 Well, this is some more from Marshall: "Did they
21 give you copies of your previous statements to review?

22 "ANSWER: Yes.

23 "QUESTION: And did you review them?

24 "ANSWER: Yes.

25 "QUESTION: And what did you tell them about your

1 previous statements?

2 "That they were all lies.

3 "QUESTION: They were all lies?

4 "ANSWER: Yes."

5 How can you believe him? You know, how can you?

6 That, ladies and gentlemen, is the sole government's case on
7 premeditation. You have to take a leap, like I told you.

8 Now I want to move on to a mitigator. One of the
9 mitigators is, an individual who is receiving life, who is
10 just as culpable, or more culpable, guilty, as Rejon Taylor.
11 And I want to start off and talk to you about Sir Jack
12 Matthews. Of course, as you-all are aware, when he was
13 arrested on this case, he had a case pending of rape and child
14 molestation of a 12-year-old girl. No history like that in
15 Rejon Taylor anywhere; none.

16 This is Marshall talking about, "When we went to the
17 side of the house.

18 "Side of the house?

19 "Yes.

20 "Is that the point in time you said, 'This isn't
21 going to work'?"

22 Marshall's talking to Sir Jack.

23 "Yes.

24 "Okay. What did Sir Jack Matthews call you at that
25 point?

1 "I told him I was scared.

2 "He said some other things, didn't he? Well, he
3 said you were a pussy, didn't he?

4 "Yes.

5 "That's what Sir Jack Matthews called you?

6 "Yes."

7 And by the way, I will disagree with Mr. Poole. You
8 go by what you recall. As I recall, it was Joey Marshall that
9 brought the guns, originally, to the house.

10 And then this is about the actual shooting. And
11 just think about it a minute. If his gun hadn't jammed, who
12 would have killed Guy Luck? Sir Jack Matthews.

13 And this is testimony from Marshall again: "But he
14 just couldn't. If he could have, he would have shot and
15 killed him, right?

16 "I don't know if he would have shot and killed him,
17 but...

18 "He would have shot him again, wouldn't he?

19 "ANSWER: Yes.

20 "QUESTION: No question in your mind about that, is
21 there?

22 "Yes.

23 "There is a question?

24 "No. He would have shot him."

25 His intent -- Sir Jack Matthews certainly had the

1 intent at that point to kill Guy Luck himself.

2 Here again, by Mr. Poole to Mr. Marshall, "Who said
3 that, Mr. Marshall?

4 "Sir. Sir said the guy flinched, the guy moved.

5 "Okay.

6 "So he said he shot him. He said, 'My gun
7 jammed --'

8 "You're talking about Mr. Matthews at this point,
9 Sir Matthews?

10 "Yeah. Matthews said, 'My gun jammed up. I
11 couldn't shoot no more.' But he said, 'Rejon -- Rejon
12 soldier. Rejon turned around and busted him."

13 Talking about -- and then what did Rejon say? Was
14 he bragging? Was he saying, "Look what I just did"? Was he
15 saying, "I'm the man. Look at me"?

16 Here is what he did.

17 "At this point Rejon is still just sitting in the
18 front seat. He hasn't said -- he hasn't said nothing else."

19 Who is it that's acting the big man, the bad man,
20 the tough guy? Sir Jack Matthews, that's getting a life
21 sentence.

22 MR. POOLE: Objection, Your Honor. I don't think
23 that's the proof.

24 THE COURT: Mr. Ortwein?

25 MR. WILLIAM ORTWEIN: Your Honor, his plea agreement

1 was introduced showing that.

2 THE COURT: What was the statement again?

3 MR. NEFF: That Sir Jack Matthews was getting life.

4 I think there was also proof that he expects not to.

5 MR. WILLIAM ORTWEIN: Well, what he expects, not
6 what's going to happen.

7 MR. NEFF: We don't know what's going to happen.

8 MR. WILLIAM ORTWEIN: Well, it's up to you to file
9 the motion.

10 THE COURT: Ladies and gentlemen, again, if what the
11 attorneys say is not supported by the evidence, ignore what the
12 attorneys say and rely upon your own recollection of the
13 evidence.

14 I think it is indisputable, though, that
15 Mr. Matthews has not been sentenced as of yet. Is that right?

16 MR. WILLIAM ORTWEIN: That is correct, Your Honor.

17 Then let's talk just a minute about Joey Marshall.

18 And don't forget Joey Marshall was involved in all of this.

19 The drug dealer. And you heard what he said about that. And
20 not only that, I'll summarize just briefly, Mr. -- "The U. S.
21 Attorney went over this plea agreement with you?

22 "Yes, he did.

23 "In great detail?

24 "Yes.

25 "To make sure you understood it?

1 "Yes.

2 "You broke the agreement with the government, didn't
3 you, by violating the law, attempting to escape, correct?

4 "Yes.

5 "So you've broken your written word with these folks
6 right here?

7 "Yes."

8 He ain't on trial for the death penalty, either, is
9 he? And, look, he broke his word and written agreement to
10 these folks over here. (Indicating.) And he is in that
11 escape. And he sold crack cocaine. Didn't take it himself
12 because he knew what it would do to him. And he didn't care
13 what it did to anybody else, as long as he got his money.
14 He's not on trial for the death penalty.

15 And you don't see Sir Jack sitting over there as a
16 defendant, either, do you, on trial for the death penalty?

17 Here it is again.

18 "Sir Jack, did your gun jam?

19 "Yeah.

20 "And did you -- had you tried to fire it again at
21 him?

22 "Yes, I tried to fire it again.

23 "So you tried to shoot him again, correct?

24 "Yes, that's correct."

25 And then, you know, Dr. Cunningham used a word that

1 I really can't remember, but to me it's sort of like impulse
2 reaction or reflex action. Rejon Taylor's in the front seat.
3 He hears shooting in the backseat. Doesn't know who's
4 shooting. No evidence he has any idea. In fact, he doesn't
5 know who is shooting who. No, he don't know. He don't know.
6 He probably seen-- Yeah, come to find out we got -- probably
7 knows somebody's shooting at him, yeah. I can't-- I don't
8 remember the exact word, some kind of an impulse situation,
9 which is very common for people who are 18 years of age.

10 And I think you recall about common brain -- frontal
11 lobe brain development. I'm not going through all that with
12 you, except it explains to you why so many 18- and
13 19-year-olds die in car accidents. It basically has to be
14 developed to inhibit your risk-taking or, as I think
15 Dr. Cunningham said, cause you to step back and take a second
16 look at something and the consequences thereof before you
17 commit the act. And it's common in every one of us. It's
18 nothing unusual to Rejon Taylor. And as I said, that's why so
19 many 18-year-olds do crazy, stupid things like jumping off
20 bridges into 2 feet of water and killing theirself. People at
21 that age do not have the same judgment relative to taking
22 risks and recognizing the consequences of their risks as they
23 do -- as an older person would. And that's just a fact of
24 biology. It's not unique to Rejon Taylor. My children had
25 the same; everybody's children. And all of us went through

1 the same thing.

2 Then, ladies and gentlemen, I don't know what my
3 time frame is, but this -- once again, this is Joey Marshall
4 testifying about selling crack cocaine, he didn't care about
5 what anybody else did, and that he didn't use himself because
6 he knew what it did.

7 And then let's talk one more thing about Sir Jack
8 Matthews' not being on trial for death but being equally
9 culpable. You remember the detective that came in and she
10 testified about the rape case pending, and she went to
11 interview him? What did he say? He denied having sex with
12 the victim but admitted that he killed someone. He stated
13 that -- he kind of chuckled, he kind of chuckled and said,
14 "Yeah, I killed somebody, but I didn't have sex with that
15 girl." He's not on trial for the death penalty. Where's his
16 remorse?

17 Now let's talk a little bit about this escape.

18 First of all, this just says -- this is where Szabo -- it says
19 "J.R." -- real name is Uhuru, so we'll know who we're talking
20 about. And Szabo was asked, "So earlier you said that J.R.
21 wasn't a ring leader, but it sure sounds like he was to me."

22 Then the answer is, "Really there wasn't really a
23 per se ring leader."

24 And then he's asked, "So when J.R. says Rejon's the
25 ring leader of this thing, he's lying, isn't he?"

1 Szabo: "I would say so, yeah, because I don't think
2 Rejon really ever -- he never came up with the original plan.
3 So if that's part of what he said in here, yeah, I would say
4 that's a fabrication, that's a lie, yeah."

5 And then let's move to these shanks. And you saw
6 the tools. What were they for? Well, the evidence is, first
7 of all, they were stored up high, and were not for the purpose
8 of attacking anybody but to cut wire in the windows to escape.

9 This is Szabo again: "You're not using shank or
10 pipes on him --

11 "ANSWER: No.

12 "QUESTION: -- or anything like that?

13 "ANSWER: We didn't even have that stuff in our
14 possession."

15 Then, "Okay. And earlier you said most of the
16 things came from J.R.," that's Uhuru, "that he obtained the
17 weapons and the pipe. You don't know where he got them from.
18 You can assume, but you don't know where?"

19 "ANSWER: True."

20 And this, ladies and gentlemen, is what Uhuru told
21 Szabo: "I believe earlier you said if someone had got in his
22 way," that's Uhuru, J.R., "during the escape, if he had to
23 kill them, he would?"

24 "ANSWER: There was a time when all of us decided we
25 weren't even going to do it. He says, 'Look, I don't even want

1 anybody with me unless they're willing to -- either to hurt
2 somebody or to be willing to kill somebody.' I said, 'Man, I'm
3 not looking for that.' I said, 'You know what, tell you the
4 truth --' at that point I think all of us, from Rejon to -- I
5 don't know about Joey, but Rejon and Thaddeus and myself said,
6 'I don't -- I'm not willing to do all that.' And the whole
7 plan, like, dissolved for a few days, or however long it was."

8 What's the evidence? If somebody was going to get
9 hurt in that escape and there was a plan to do it, Rejon
10 Taylor was not going to be a part of it; he refused to.

11 And then he goes on about the shank things, how they
12 looked. They were kept in the ceiling as well. They weren't
13 on them when the escape attempt occurred.

14 "And then you were going to cut your way out of the
15 window. What did you need?"

16 There was wire mesh inside these windows, stainless
17 steel. And you recall what he starts talking about. Here is
18 the pipe that was long and sharpened on one end. And he said
19 that he, Szabo, sharpened that pipe, and basically says,
20 "They," talking about other people, "came up with the things
21 that we needed.

22 "Who is 'they'?

23 "J.R. -- as far as I know, just J.R., because J.R.
24 is the only one that ever showed them to me."

25 So he's saying Rejon had nothing to do with coming

1 up with the escape materials.

2 "All right. There was really no plans to really
3 hurt any guards, right?

4 "ANSWER: No.

5 "And there was no plan to use any kind of weapons on
6 the guards at all, was there?

7 "ANSWER: No."

8 Now, the government has introduced-- Moving to
9 another subject, but this all deals with future dangerousness.
10 And, remember, future dangerousness is not out in the
11 neighborhood. Future dangerousness is in a federal
12 penitentiary, among inmates and guards, because Rejon Taylor
13 will never, ever be in the general -- out in the general
14 public again. As you heard the evidence, there will always,
15 for the rest of his life, be at least one gun, if not more,
16 between Rejon Taylor and society.

17 THE CLERK: You have ten minutes.

18 MR. WILLIAM ORTWEIN: Thank you.

19 They have this letter they introduced, and basically
20 what it talks about is, it says that, "Well, you know, I'm
21 going to get a new trial. I don't have to worry about Joey
22 coming back and testifying against me, because he won't be
23 available."

24 Well, when you hear that, that's one thing. But
25 listen to this letter from Szabo, and you'll understand where

1 that came from. He says in his original letter, "I hear
2 somebody wants to do something to him," not that he, Rejon,
3 does.

4 Here is what Szabo says, "Tell Rerun, that's what I
5 call him, joking, keep his head up. Also let him know the
6 word is already out in the federal joint, what joint I'm at,
7 about what Joey and Sir Jack did. Let him know that they're
8 snitches. Let him know what they have done."

9 Briefly, ladies and gentlemen, moving on, because
10 I'm about out of time, here, once again, after the shooting
11 was over, there was testimony Rejon didn't say a word, sat
12 there real quiet, didn't brag about it.

13 "He just sat there quietly?

14 "That's correct.

15 And then later on, a couple of weeks after it was
16 over, what did he say, Mr. Marshall says?

17 "Yes. Do you remember, though, there was one in
18 which he looked at you and he said, 'Joey, my heart can't take
19 it'?"

20 And the answer is, "Yes."

21 Had nothing to do with a courtroom. Before he was
22 even arrested, ladies and gentlemen, "My heart can't take it."

23 They say that Rejon Taylor also can't adapt to
24 things in jail. And like I told you before, no matter what he
25 does or how hard he tries, he can never make up for the loss

1 that he has caused. A couple of things you have seen—he
2 completed anger management course in the Hamilton County Jail,
3 not once but twice, he got his GED while in the Hamilton
4 County Jail. Unfortunately, where he will go, the only
5 programs available will be those to debilitate him.

6 MR. NEFF: Your Honor, objection.

7 MR. WILLIAM ORTWEIN: I believe that was the evidence
8 Your Honor allowed in.

9 THE COURT: What is it again?

10 MR. WILLIAM ORTWEIN: I said that, unfortunately,
11 wherever he goes in the federal pen, the only programs will be
12 there to debilitate him. I think that came in on redirect.

13 THE COURT: I'm not-- Are you referring to
14 Mr. Aiken?

15 MR. WILLIAM ORTWEIN: Yes, sir.

16 THE COURT: That wasn't the word he used. I believe
17 "incapacitate."

18 MR. WILLIAM ORTWEIN: "Incapacitate."

19 THE COURT: Objection sustained.

20 MR. WILLIAM ORTWEIN: I said the wrong word. The
21 only programs that will be available will be to incapacitate
22 him. That is because he will never, ever leave a federal
23 penitentiary again. They only want to incapacitate him so that
24 he is not an escape risk, he is not a problem at all for
25 anybody. He can't get education or anything else, since he

1 will never darken the door of one of those penitentiaries and
2 head outside.

3 You have a difficult and hard decision, which I
4 don't envy you, you know, because, as I said before, it's how
5 Rejon Taylor will die. And, ladies and gentlemen, it is not
6 just 12 people's decision; it is each and every one of your
7 decisions, as an individual, coming to a decision that you
8 personally can live with the rest of your life as individuals,
9 and that you will be as sure 20 years, 30 years, 40 years from
10 now of the decision that you reach today, that you'll be as
11 sure of it, that you did the right thing, then.

12 You know, I will submit to you, as I said, this part
13 of the hearing is not guilt or innocence. He's guilty. No
14 question you've come to that verdict. That's not what we're
15 arguing about. It's whether or not the mitigators, which are
16 not excuses but show you who Rejon Taylor is and that he is
17 not one of the worst of the worst, he's not a Terry Nichols
18 that killed 180 people at Oklahoma City, or Eric Rudolph --

19 MR. NEFF: Objection, Your Honor.

20 MR. WILLIAM ORTWEIN: -- who got life, that killed
21 two people.

22 THE COURT: What's the objection?

23 MR. NEFF: He's talking about other cases that don't
24 have any bearing on this case.

25 THE COURT: Mr. Ortwein?

1 MR. WILLIAM ORTWEIN: I think I'm able to use
2 examples of what the worst of the worst is and why it's not --
3 who it's not.

4 THE COURT: Sustained.

5 MR. WILLIAM ORTWEIN: Okay.

6 As I say, ladies and gentlemen, we have tried,
7 within the confines of the law, to let you know who this young
8 man really is—it's not a pretty picture; it was one that was
9 somewhat scripted—and tried so you will understand how he
10 came to be and what he is not. Even though the government has
11 attempted to portray him as other things, all of us, every one
12 of us, have written and said things during emotions that we
13 wish we never had, and regret it. And I submit to you that
14 when we do that, that doesn't show who we really are, not at
15 all.

16 And in all of us, as human beings, there is some
17 good. And there is some good in Rejon Taylor. And I submit
18 to you that when -- and I pray that when you examine—I
19 haven't gone through them—the mitigators and the aggravators,
20 you will find and see that there is some good in Rejon Taylor,
21 and that he does not deserve to die at the hand of an
22 executioner but in a prison ward. Thank you.

23 THE COURT: Mr. Neff?

24 MR. NEFF: Thank you, Your Honor.

25 I agree with Mr. Ortwein on one thing. I want to

1 talk about who Rejon Taylor really is, who Rejon Taylor is
2 not. Has to do with his youthful appearance, his charming
3 smile, his soft-spoken demeanor. Has absolutely nothing to do
4 with who Rejon Taylor really is. What you see, that's not who
5 showed up at Mr. Luck's house in August of 2003. What showed
6 up at Mr. Luck's house in 2003 is something entirely
7 different. We measure Rejon Taylor and who he is by his
8 actions, not by his appearance, not by anything else, just his
9 actions. So how do we know who he is?

10 Ladies and gentlemen, during this trial he made
11 phone calls, over 10,000 of them, but several of them talking
12 about, laughing about, the victim and the victim's loved ones.
13 That's who Rejon Taylor really is. He wrote letters, ladies
14 and gentlemen, during this trial, laughing about his crime,
15 threatening witnesses, guaranteeing they wouldn't testify
16 against him, making fun of the victim, saying, "They act like
17 I killed the President." Ladies and gentlemen, that's who
18 Rejon Taylor really is. (Indicating.) That's who Rejon
19 Taylor --

20 MR. WILLIAM ORTWEIN: Objection.

21 MR. NEFF: -- really is.

22 MR. WILLIAM ORTWEIN: That's an appeal to sympathy
23 and bias. It's disallowed.

24 THE COURT: Mr. Neff?

25 MR. NEFF: Your Honor, it's proof in the trial.

1 MR. WILLIAM ORTWEIN: The jury is looking at it,
2 Judge.

3 MR. NEFF: It's admitted as evidence. Goes right to
4 the issue of intent and substantial planning, premeditation.

5 THE COURT: Ladies and gentlemen, the attorneys are
6 authorized to make closing arguments to you. And obviously
7 each side feels very, very strongly about their case. I'm
8 going to instruct you of -- that your decision should not be
9 based upon passion or prejudice or bias. The picture that the
10 attorney for the government showed is something that came into
11 evidence. He had indicated he was going to show you, I
12 believe, who the defendant was, and he put the picture up.
13 Obviously the picture was not of the defendant; the picture was
14 of Mr. Luck.

15 Proceed, Mr. Neff.

16 MR. NEFF: Thank you, Your Honor.

17 My point is, who the defendant is you can tell by
18 the results of his actions. That's the point. And that is
19 the result of the defendant's actions. That's the result of
20 the defendant's substantial planning and premeditation.
21 That's the result of the defendant's intent in this case.
22 (Indicating.)

23 Who is Rejon Taylor really? Ladies and gentlemen,
24 he's a manipulator. He's a controller. He's a schemer. He's
25 a remorseless and relentless hunter. He's a cold-blooded

1 killer with no conscience. And he's a murderer who refuses to
2 accept responsibility, who refuses to apologize, and who
3 refuses to repent. That's who Rejon Taylor really is.

4 I want to address some of the mitigating factors
5 that the defense has discussed with you already. First of
6 all, when you get your verdict form from the Judge, there are
7 going to be a large number of potential mitigating factors for
8 you to consider on behalf of the defendant, as well as the
9 aggravating factors that the government has alleged. The list
10 means nothing. I mean, the list is merely a submission by the
11 defense for your consideration. The fact that there are
12 30-some-odd listed on there doesn't mean anything. You need
13 to consider them separately and then decide, Number 1, whether
14 they've proven them and, Number 2, whether they are in fact
15 mitigators. That's your job in this case.

16 Mr. Ortwein said during his opening statement in the
17 sentencing as well as just a few minutes ago that mitigators
18 are not excuses. Ladies and gentlemen, I submit to you that
19 many, many of those mitigators listed there are excuses. It's
20 the defendant's attempt to try on different masks to hide who
21 he really is.

22 Now, the defense suggests that Mr. Matthews is
23 equally culpable. Is Mr. Matthews a reprehensible human
24 being? Sure he is. Of course. You saw him. But he's not
25 equally culpable. Would he have killed Guy Luck? I don't

1 know. Maybe. The defendant did. The defendant killed Guy
2 Luck. Sir Matthews is the guy that Rejon Taylor calls his
3 "buddy" in the letters. Sir Matthews is the guy that Rejon
4 Taylor continues to conspire with to try to perpetrate a fraud
5 on the Court.

6 MR. WILLIAM ORTWEIN: Objection. No evidence to
7 that, Judge.

8 MR. NEFF: There's copious amounts of evidence to
9 that, Judge.

10 MR. WILLIAM ORTWEIN: Objection. There is absolutely
11 no evidence in that record. They have implied that throughout
12 this trial, but there is no evidence of it.

13 THE COURT: Ladies and gentlemen, as I said before,
14 if you do not find any evidence to support the statements of
15 the lawyers, then you should ignore the lawyers' statements.

16 MR. NEFF: Mr. Matthews on the phone talking about
17 how he's going to come in and testify for Rejon. Rejon Taylor
18 on the phone talking about "the big day tomorrow" when we know
19 Marshall -- or Matthews came in and testified and changed his
20 story.

21 Is Joey Marshall equally culpable? And, by the way,
22 Sir Matthews didn't try to escape. Out of all his failings,
23 he didn't try to escape. The defendant did, though. Now,
24 Mr. Marshall, he did try to escape. But, remember,
25 Mr. Marshall is the same guy that chickened out when he was

1 supposed to go confront Mr. Luck at his residence, he's the
2 same guy that chickened out when they were supposed to try the
3 first attempt at the escape, and he's basically the guy that
4 chickened out and did nothing when they actually made the
5 attempt. Mr. Uhuru's letter talks about that. He says Rejon
6 took care of business, he did what he was supposed to do in
7 trying to escape, he performed his role, he recruited
8 Marshall, he recruited his mother, he arranged for the
9 transportation, he did his part.

10 Now, the defense says the only way—I put quotation
11 remarks around this; I think Mr. Ortwein said this in opening
12 and then he said something similar a few minutes ago—the only
13 way he would not have become a criminal is if he rejected his
14 family. Isn't it interesting, he had his family come in and
15 testify, and now he turns around and blames them? And let's
16 think about this for a minute. First of all, "scripts." Like
17 it's written in stone that Rejon Taylor had to be a killer.
18 It's offensive. He had a family member who is a clerk in a
19 court who testified. He had a family member who is a nurse
20 who testified. He had a family member who is an airlines
21 employee. He had a family member who is a postal worker. He,
22 himself, ladies and gentlemen—Mr. Ortwein talked about
23 this—he, himself, started his own legitimate business. And
24 this was after he lived with his father. He knows the right
25 thing from the wrong thing. He could have done something

1 productive. He chose not to. He's an adult, and he's
2 responsible for his actions. He had a teacher that came in
3 and testified, a teacher who, by all accounts, appears to be a
4 fine role model for Rejon Taylor, somebody that Rejon Taylor
5 associated with purposely, under the auspices of volunteering.
6 Of course at the time he's volunteering, he's engaging in
7 criminal acts, but the teacher didn't know that.

8 Frontal lobe development. Are 18-year-olds more
9 impulsive than 20-year-olds, 30-year-olds, 45-year-olds?
10 Well, sure they are. That's common sense. Impulsive to the
11 point where you kidnap someone at gunpoint, drive them for two
12 hours, and shoot them in the mouth?

13 This wasn't a reaction by Rejon Taylor. He had
14 hours, weeks, months, to steer away from this course of
15 action. He chose not to. Remember what he said in his
16 letter? He researched his victims. He didn't do anything
17 without substantial planning. He always made sure he knew
18 everything there was to know about his victims before he did
19 it.

20 Frontal lobe development. Ladies and gentlemen, I'm
21 sure that many people know of friends, family members,
22 acquaintances, people who had similar obstacles. Did Rejon
23 Taylor have obstacles in his life? Sure he did. I'm sure
24 many people know of examples of people who have those same
25 types of obstacles, people who serve in Iraq honorably for

1 their country, make that decision to do the right thing. It's
2 not written in stone that Rejon Taylor needed to kill someone.

3 "My heart can't take it." Well, let's put that in
4 context, ladies and gentlemen. When he said, "My heart can't
5 take it," he didn't mean "My heart can't take it, I feel so
6 bad that I've killed somebody;" he meant, "My heart can't take
7 it. The police are on me. I might get caught." That's what
8 he meant, because when you put it in context, it's in the
9 context of him robbing drug dealers to get money to get out of
10 town; that's what it means, not "I feel really bad about what
11 I did."

12 Now, go ahead and review the statutory aggravating
13 factors that the government has alleged. Commission of
14 another felony, that he committed the murder during the
15 commission of another felony. Essentially, ladies and
16 gentlemen, you've already found this. That was your verdict
17 during the course of the trial itself, that he perpetrated the
18 murder during and in relation to the kidnapping. That
19 statutory aggravating factor is proven. You've already found
20 that it's proven. And once you find that, you can consider
21 the death penalty.

22 So let's talk about substantial planning and
23 premeditation, talk a little bit about intent. How do we know
24 what the defendant intended? How do we know that he engaged
25 in substantial planning and premeditation? It's not because

1 just what Joey Marshall said. And I would submit to you that
2 the defendant's actions on occasions prior to -- leading up to
3 the time of the murder shed a lot of light on his thought
4 process and the kinds of things that he does, the kinds of
5 things that he thinks about, the kinds of things that he plans
6 before he does them. Let's talk about some of those things.

7 We know that he targeted this victim, he burglarized
8 him multiple times, over and over and over again. We
9 know he chose his victims carefully. He cased them out, chose
10 them, planned things thoughtfully. He didn't always tell Joey
11 Marshall or Sir Matthews what was going on in his head. That
12 might be counterproductive.

13 There's indications that he was stalking the victim,
14 that he was hunting him, ladies and gentlemen, following him
15 from place to place, eating in his restaurant, researching
16 him, following him home. He showed up at the house that day
17 and provided two loaded guns. Ladies and gentlemen, why do
18 you load a gun? You load a gun because you intend to use it.
19 Two young men accosting an older guy at gunpoint. They didn't
20 need guns at all, in the first place. And even if they did
21 need guns to intimidate him, they didn't need to load them.
22 He was no threat to them physically. Why would you load a gun
23 unless you're intending on using it?

24 No masks. They're going to drive this guy two hours
25 from Atlanta to Tennessee, with no masks, to drop him off and

1 let him out of the van. Well, all he would be able to do is
2 identify them. He just rode with them for two hours. They
3 had no intent of ever letting-- Rejon Taylor had no intent of
4 ever letting Guy Luck out of that van alive.

5 There was paper work in the house. Ladies and
6 gentlemen, there was a warrant. There was a warrant for the
7 defendant's arrest. There was paper work in that house which
8 indicated that the thieves had been identified. Mr. Ortwein
9 makes a big deal about the credit cards sitting on top of the
10 paper work, and that you can't see it. Well, so what? By the
11 time it gets photographed-- What, Rejon couldn't have picked
12 them up and looked at them? You can't tell what's underneath?
13 And isn't it interesting that he left credit cards there, left
14 a checkbook there?

15 Two-hour drive. He stops and makes the comment to
16 Marshall -- Marshall wouldn't have known about the paper work
17 inside the house, but he makes the comment to Marshall that,
18 "This is the guy that took the warrants out on me." Paid for
19 the gas, as Mr. Poole said, with his mom's credit card. He's
20 thinking. He's thinking, ladies and gentlemen. Driving to
21 Tennessee-- He drives back and forth when he gets into
22 Tennessee—you remember the video of the drive, that the
23 police officer made of the drive that he took—and back and
24 forth, and getting more and more and more rural, and finally
25 ending up on a road with a hillside of woods on one side and a

1 creek on the other. Where was he going? Ladies and
2 gentlemen, he was going to kill Mr. Luck. And then we know
3 what he intended to do because Mr. Luck was already shot three
4 times by the time that Rejon Taylor pointed that gun and shot
5 him in the mouth. That's how you know what his intentions
6 were. The victim's reaction also tells us a little bit about
7 it. When Rejon Taylor first showed up at his house that day,
8 the victim didn't know it, Mr. Luck didn't know it, but he was
9 already dead. Now, somewhere during the ride he figured it
10 out. The torment that he must have endured is indescribable,
11 driving for two hours in the back of that van. And that
12 torment drove his panicked reaction. He had to try to get
13 away. Can't even imagine the horror of knowing that he was
14 going to die while lying on the side of an unfamiliar road in
15 a state that he doesn't go to, away from his loved ones.

16 How do we know what Rejon Taylor planned? Well,
17 let's look at what he did after the murder. First of all,
18 yeah, the plan didn't go acc- -- it didn't go according to
19 plan. We're the first ones to say that. Didn't go according
20 to plan, because the victim tried to preempt what he knew was
21 coming. Yet witnesses are showing up on the scene. The
22 defendant has to get out of the van. His glove gets caught in
23 the seat belt, and he's got to leave. He can't get out of the
24 van with guns in his hands, because there's witnesses arriving
25 on the scene. But what does he do when he goes to the car?

1 He flips down the tag. He's thinking. He's still thinking.
2 Would somebody who had panicked, would somebody who had shot
3 somebody else in self-defense, or shot him accidentally, or
4 shot him not really meaning ever to kill him, would they be
5 thinking about that?

6 He then calmly directs Mr. Marshall through traffic.
7 Yeah, his reaction to Mr. Matthews, who is a thug, getting
8 into the car and saying, "You're a soldier, you busted him,"
9 his reaction was not what you would expect of an ordinary
10 human being. His reaction wasn't, "I didn't do-- I didn't
11 mean to do it. Oh, my God! What are we going to do? I
12 didn't mean for this to happen." That wasn't his reaction.
13 His reaction was stone-cold calm silence. And then what did
14 he do that night? He took the victim's money and he went on a
15 date to Red Lobster with his girlfriend.

16 Now, let's talk about the nonstatutory aggravating
17 factors. We put on victim impact evidence with Robin Belcher.
18 You heard from Stephanie Belcher during the course of the
19 trial itself. You know a little bit about who Mr. Luck was,
20 what he meant to his loved ones, what he meant to the
21 community, the business he had, the effect that it's had on
22 their lives. Just makes sense. Yet the defendant is still
23 boldly attacking the victim here; he's boldly attacking him in
24 his letters and his phone calls, through Matthews' testimony.
25 He laughs and makes fun of the victim and his loved ones, even

1 while they get up here and cry. "They're acting like I killed
2 the President or something." No, he killed somebody equally
3 valuable. Lack of remorse. Failure to adapt to societal
4 norms.

5 You know, the defendant has an uncanny ability to be
6 who he needs to be to satisfy his own ends. He's a chameleon.
7 In the Army, when we used to go out in the field, we'd put
8 camouflage on our face and wear camouflage so we would blend
9 in so you couldn't see us. It's Halloween time. It's time we
10 put on a mask and pretend to be something that we're not. So
11 what are the masks, the facades, that Rejon Taylor uses to
12 manipulate people in his life? Loving family member. Helpful
13 friend. Entrepreneur. Volunteer.

14 He fooled his long-time teacher and friend. He had
15 no idea what Rejon Taylor was doing, really.

16 Shy. Gentle. Quiet guy. Computer whiz. What
17 about big-time record producer who buys high-D TVs?

18 He fooled the clerk so much-- And the clerk, pretty
19 smart guy. He fooled him so much he gave him his telephone
20 number, said, "Call me when you have a party."

21 Religious man who fooled the chaplain twice.

22 In court the defendant gave an unsworn statement
23 that was not subject to cross-examination. Like he uses masks
24 to manipulate everyone else, he tried to do it with you, too,
25 ladies and gentlemen. He tried to trick you into believing he

1 might be sorry. Everyone was waiting for what never came,
2 though; everyone was waiting for what was never said—"I'm
3 sorry. Will you forgive me?"

4 Didn't happen. What does he do instead? He blames
5 everybody else except for himself. What indicia of remorse
6 has he shown and mercy did he show to the victim? None. He
7 went to Red Lobster on the victim's dime. Does that show
8 remorse? He hid in the refrigerator with a knife. Does that
9 show remorse? He escaped, with other parties, and in the
10 escape attempt procured shanks. Does that indicate remorse?
11 Or tried to escape. He continued to conspire with Matthews
12 and get away with it in here. Does that show remorse?
13 Guaranteeing the elimination of witnesses, guaranteeing that
14 Joey Marshall will never testify against him again, does that
15 show remorse? Ladies and gentlemen, this was just a couple of
16 weeks ago. We're not talking about something that happened
17 five years ago. We're talking about something that happened
18 in the last month.

19 Laughing about his crimes in his letters—"Once I
20 stole their identities, that was all she wrote (ha ha, laugh
21 out loud)"—making fun of the victim, in the CD and letter,
22 does that show remorse?

23 Let's talk about his future danger. The chaplain
24 said that the defendant is an influential leader. It's hard
25 to imagine something more scary than that, ladies and

1 gentlemen. An influential leader. Look with whom he
2 conspires. He conspires with an older -- a guy that's been in
3 the Vietnam war, an older guy, a guy much older than he is,
4 that's been a criminal his whole life. He conspires with
5 another guy who has killed somebody. He conspires with
6 another guy who has molested children. That's-- Those are
7 his friends. Those are the people with whom he has influence.
8 You heard the chaplain even say he has influence over hardened
9 gang members, which I'm sure the defense intended to be a
10 positive thing. But when you know what's really behind Rejon
11 Taylor and who he really is, is his influence over hardened
12 gang members really a good thing?

13 Now, why is Rejon Taylor dangerous, ladies and
14 gentlemen? He's not dangerous because he's a big, powerful
15 physical presence. He's not intimidating. He looks like the
16 librarian aides that my mother used to employ at the high
17 school library. He's not scary-looking. It's just the
18 opposite. He's more dangerous because he's not scary-looking,
19 ladies and gentlemen. He's more dangerous because you don't
20 see him coming. He's dangerous because he's smart. He's
21 dangerous because he's controlling. He's dangerous because he
22 never stops manipulating. He's dangerous because he never
23 stops conspiring. He's dangerous because he's a chameleon.
24 He's dangerous because he has no remorse. He's dangerous
25 because he has no concern for others. He's dangerous because

1 prison walls cannot contain or deter his influence, ladies and
2 gentlemen. He can recruit. He can influence. He can trick
3 anyone.

4 My kids just started reading -- in advance of
5 Halloween, started reading the book Dr. Jekyll and Mr. Hyde,
6 the kids' version of it. The defendant's story is much like
7 that Robert Louis Stevenson novel, except with a much more
8 dangerous twist.

9 The defense wants you to believe the defendant is
10 less culpable; he's young, soft-spoken; charming smile;
11 frontal lobe isn't developed yet; he had a bad family. But
12 that, ladies and gentlemen, is an illusion, designed to trick
13 you. What illusionists do, they get your attention right up
14 here while the reality is taking place down here.

15 (Indicating.) And that's what this is. That's what these
16 mitigating factors are.

17 Ladies and gentlemen, the most dangerous, the most
18 deadly, the most evil, the most horrible things in life often
19 come in the most innocent, innocuous, and even attractive and
20 alluring packages. When we walk down the street, we see a guy
21 like Charles Manson, or even Sir Matthews, what do we do? We
22 see bad-looking guys, scary-looking, we cross the street, we
23 stay away, we know to avoid them. The defendant's dangerous
24 because, again, we don't see him coming. His quiet,
25 soft-spoken, charming demeanor is really a friendly mask for

1 the reality that there is a cunning and criminal mind at work
2 behind that mask, and you've seen the evidence of it all
3 throughout this trial. The defendant is not Dr. Jekyll and
4 Mr. Hyde. He always looks-- Dr. Jekyll and Mr. Hyde, you
5 know how to transform, you could tell who you were dealing
6 with; you had Hyde over here, ugly monster-looking guy, and
7 you had Dr. Jekyll over here. (Indicating.) The defendant is
8 dangerous because he always looks like Dr. Jekyll but his
9 mind, his mind, ladies and gentlemen, is always working like
10 Mr. Hyde.

11 Now, what do we do about this? What's the plan of
12 action? Ladies and gentlemen, society has a right to
13 self-defense, just like the victim Mr. Luck had a right to
14 defend himself. He fought tooth and nail to defend himself.
15 He had every right to kill the defendant to protect himself
16 and to defend himself, and so do you. He couldn't finish what
17 he had the right to start. You not only have the right but
18 you have the obligation to finish it.

19 A lot of times you'll hear people talking about the
20 horrible things that happen in the community—"When are they
21 going to do something about that?" Well, ladies and
22 gentlemen, you are now they. When it comes to Rejon Taylor,
23 you are the ones that have to do something about it. You are
24 the ones who have the obligation to be the sheep dog that
25 protects the sheep, and even sometimes the wolves, from the

1 wolf.

2 There is a degree-- There are two degrees of
3 punishment here. There is the minimum punishment, and there
4 is the maximum punishment. The minimum punishment is life
5 without parole. Did Rejon Taylor do the minimum? Joey
6 Marshall did the minimum. That's why he's getting life
7 without parole; hoping that he'll get a break, even. Sir
8 Matthews did at least the minimum. He's getting life without
9 parole. Neither of them comes close to getting what -- or
10 comes close to being as culpable as the defendant.

11 THE CLERK: You have two minutes.

12 MR. NEFF: Thank you.

13 Hear sometimes people talk about an-eye-for-an-eye
14 philosophy. Ladies and gentlemen, that's a limitation on
15 punishment. We're not-- We're asking for your punishment to
16 be more merciful and less than the defendant's crime. We're
17 not asking you to surprise him, drag him out of his cell,
18 drive him around for a couple of hours, shoot him in the
19 mouth, and leave him on the side of the road to die. That
20 would be eye for eye. What we are asking for is that you give
21 him due process—already done—give him a fair trial—already
22 done—you give him a humane execution, you give him a chance
23 to communicate with loved ones until then, you give him a
24 chance to realize and express true remorse before he's
25 executed. We're asking you to exercise the legitimate

1 authority given to the people by Providence, the people of
2 this government. You are the people of the government. The
3 defendant's conspiracy did not end when he shot the victim in
4 cold blood in August 2003. He continues to this day. He's
5 never stopped plotting. He's never stopped planning. He's
6 never stopped scheming. He's doing it now. He will never
7 stop plotting unless you stop him.

8 We're mindful of what we're asking you to do. It's
9 not easy. Voting to execute someone isn't easy. The right
10 thing, though, ladies and gentlemen, is not often the easy
11 thing. It's sometimes hard to do the right thing. Voting to
12 execute him isn't easy, but it is right, it is just, and it
13 must be done. The mask is off. You see what he really is.
14 You are the only ones, you, ladies and gentlemen, are the only
15 ones who can ensure that justice in its truest form is done.

16 THE COURT: Ladies and gentlemen, why don't we go
17 ahead and take our afternoon break at this point. We will
18 resume at 4:00.

19 (Brief recess.)

20 THE COURT: Be seated.

21 Ladies and gentlemen, now that the attorneys have
22 presented their information regarding defendant's sentencing,
23 I must instruct you on the law concerning your decision. This
24 is a weighty decision, one of the most important decisions
25 that can be made in a court of law. The instructions I gave

Jury Charge

1 to you during the first phase of the trial still apply, as
2 well as any instructions I have previously given you in this
3 phase.

4 You will be required to decide if defendant should
5 receive the death penalty or be sentenced to life imprisonment
6 without possibility of release. This is a decision left
7 exclusively to the jury. In making all of the determinations
8 you are required to make in this phase of the trial, you may
9 consider any relevant evidence that was presented during the
10 guilt phase of the trial as well as evidence or other proper
11 information that was presented at this sentencing phase of the
12 trial. With the exception of your ability to consider
13 information that does not rise to the level of evidence in
14 this phase of the trial, the instructions I gave you
15 previously regarding evidence apply here, also.

16 Remember to not let rumors, suspicions, or anything
17 else you may have seen or heard about this case outside of
18 court influence your decision in any way.

19 Just as in the first phase of the case, the
20 attorneys presented stipulations during this phase. When the
21 attorneys for both sides stipulate or agree to the existence
22 of a fact, you should accept the stipulation as evidence and
23 regard the fact as proved. You are not required to do so,
24 however, since you are the sole judge of the facts.

25 During the sentencing phase, defendant spoke to you

Jury Charge

1 while seated at the defense table. As I instructed you at the
2 time, his statement was not testimony or evidence. He was not
3 sworn, he was not on the witness stand, he was not questioned
4 by his attorneys, and he was not subject to cross-examination.
5 Because what he said was not evidence, he was not permitted to
6 talk about any factual matters or discuss the evidence in the
7 case. Rather, he was simply being provided an opportunity to
8 speak to you personally regarding himself and sentencing.
9 Although you may not treat his statement as evidence, you may
10 consider his statement in reaching your decision regarding
11 sentencing. Instead, this was his opportunity to speak to you
12 personally regarding himself and your sentencing decision.
13 Although you will not be treating his statement as evidence,
14 you must give his statement consideration when you are
15 reaching your decision regarding sentencing.

16 You have heard several witnesses offer you their
17 opinions regarding various matters. The law permits witnesses
18 to offer an opinion if they have special knowledge or
19 experience which may be helpful to the jury. As is true with
20 all witnesses, you are the sole judges of their credibility.
21 You are not required to accept their opinions. In deciding
22 how much weight to give them, you should consider the
23 witnesses' qualifications and how the witnesses reached their
24 conclusions as well as any other factors you think are
25 relevant to determining whether their opinions are credible or

Jury Charge

1 not. Remember that you alone decide how much of a witness's
2 testimony to believe and how much weight it deserves.

3 Just as I instructed you during the first phase of
4 this case, the government has the burden of proof in most
5 aspects of this phase. Where the government has the burden of
6 proof, it must carry that burden by proof beyond a reasonable
7 doubt. The same instructions on this point I gave you
8 previously apply here.

9 In some aspects of this phase of the case, the
10 defendant has the burden of proof. However, unlike the burden
11 the government bears, proof beyond a reasonable doubt, the
12 burden on the defendant is only proof by a preponderance of
13 the evidence. Preponderance of the evidence is a lesser
14 standard of proof under the law than proof beyond a reasonable
15 doubt. A fact is established by a preponderance of the
16 evidence if its existence is shown to be more likely so than
17 not so. In other words, a preponderance of the evidence means
18 such evidence as, when considered and compared with that
19 opposed to it, produces in your mind the belief that what is
20 sought to be established is, more likely than not, true.

21 The lawyers for both sides objected to some of the
22 things that were said or done during the trial. Do not hold
23 this against either side. The lawyers have a duty to object
24 whenever they think something is not permitted by the rules of
25 evidence. Those rules are designed to make sure both sides

Jury Charge

1 receive a fair trial. And do not interpret my rulings on
2 their objections as any indication of how I think the case
3 should be decided. My rulings were based on the law, not on
4 how I feel about the case. Remember, your decision must be
5 based only on what you saw and heard here in court.

6 The fact that defendant did not testify cannot be
7 considered by you in any way. Do not even discuss it in your
8 deliberations. A defendant has an absolute right not to
9 testify or to testify. It is the government's burden both to
10 prove guilt beyond a reasonable doubt and, at this stage of
11 the proceeding, to prove beyond a reasonable doubt that
12 defendant should receive the death penalty. The burden is not
13 on the defendant to prove he should not receive the death
14 penalty.

15 The Court has permitted you to take notes during the
16 course of this trial in light of the length of the trial, the
17 number of witnesses, and the complexity of the issues. In
18 your deliberations you may use your notes to aid in your
19 recollection of the evidence, but, remember, your notes
20 themselves are not evidence. Neither your notes nor the notes
21 of any other juror should take precedence over your own
22 independent recollection of the evidence received in the case.
23 Notes are only an aid to recollection, and are not entitled to
24 any greater weight than actual recollection or the impression
25 of each juror as to what the evidence actually was.

Jury Charge

1 That concludes the part of my instructions
2 explaining your duties and the general rules. I will now
3 explain the factual determinations you must make in this
4 sentencing proceeding.

5 Before you may consider the imposition of the death
6 penalty, you must first unanimously agree beyond a reasonable
7 doubt that the defendant was 18 years of age or older at the
8 time of the offense. The parties in this case have stipulated
9 that defendant was at least 18 at the time of the offense.

10 If you determine defendant was at least 18 years of
11 age at the time of the offense, you must then consider whether
12 the government has proved that the defendant intentionally
13 killed or committed acts resulting in the death of Guy Luck in
14 one of the intent factors alleged by the government.

15 The government alleges four intent factors: First,
16 defendant intentionally killed Guy Luck. To establish that
17 the defendant killed the victim, the government must prove
18 that the defendant killed a victim with a conscious desire to
19 cause the victim's death.

20 Second, defendant intentionally inflicted serious
21 bodily injury that resulted in the death of Guy Luck. The
22 government must prove that the defendant deliberately caused
23 serious injury to the victim's body which in turn caused the
24 victim's death. Serious bodily injury means a significant or
25 considerable amount of injury which involves a substantial

Jury Charge

1 risk of death, unconsciousness, extreme physical pain,
2 protracted and obvious disfigurement, or protracted loss or
3 impairment of a body member, organ, or mental faculty.

4 Third, defendant intentionally participated in an
5 act, contemplating that the life of a person would be taken or
6 intending that lethal force would be used in connection with a
7 person other than one of the participants in the offense, and
8 the victim died as a direct result of the act, which directly
9 resulted in the death of Guy Luck. The government must prove
10 that the defendant deliberately committed the act with a
11 conscious desire that a person be killed or that lethal force
12 be employed against a person. The phrase lethal force means
13 an act of violence capable of causing death.

14 Fourth, defendant intentionally and specifically
15 engaged in an act of violence, knowing that the act created a
16 grave risk of death to a person other than one of the
17 participants in the offense, such that participation in the
18 act constituted a reckless disregard for human life, and Guy
19 Luck died as a direct result of the act.

20 Intent or knowledge may be proved like anything
21 else. You may consider any statements made and acts done by
22 defendant and all of the facts and circumstances in evidence
23 which may aid in a determination of defendant's knowledge or
24 intent. You may, but are not required to, infer that a person
25 intends the natural and probable consequences of acts

1 knowingly done or knowingly omitted.

2 If you find that the government has proved at least
3 one of the intent factors, then you must determine whether the
4 government has proved beyond a reasonable doubt the existence
5 of either of the two statutory aggravating factors. In my
6 instructions at the start of this phase of the case, I
7 mentioned aggravating factors and mitigating factors and I
8 told you I would define those terms later. I will do so now.
9 These factors concern the circumstances of the crime or the
10 personal traits, character, or background of the defendant,
11 and the effect of the offense on the victim. The word
12 aggravate means "to make worse or more offensive" or "to
13 intensify." The word mitigate means "to make less severe" or
14 "to moderate." An aggravating factor, then, is a fact or
15 circumstance which would tend to support your decision that
16 the death penalty is the appropriate punishment in this case.
17 A mitigating factor is any aspect of defendant's character or
18 background, any circumstance of the offense, or any other
19 relevant fact or circumstance which might indicate that the
20 defendant should not be sentenced to death.

21 The government has alleged two aggravating factors
22 that are set out in the law. We call these statutory
23 aggravating factors. The jury need only find that the
24 government has proven one of these statutory aggravating
25 factors beyond a reasonable doubt.

1 The first statutory aggravating factor is that the
2 death, or injury resulting in death, occurred during the
3 commission of kidnapping. The government must prove beyond a
4 reasonable doubt that the defendant committed the kidnapping,
5 which during the first phase of the trial you found defendant
6 guilty of, and the death or injury occurred during the
7 commission of that kidnapping.

8 The second statutory aggravating factor alleged by
9 the government is that defendant committed the murder after
10 substantial planning and premeditation to cause the death of
11 Guy Luck. Please keep in mind that substantial planning and
12 premeditation refer to the crime of murder, not to any other
13 offenses that accompanied or preceded the murder. Planning
14 means mentally formulating a method for doing something or
15 achieving some end. Premeditation means thinking or
16 deliberating about something and deciding whether to do it
17 beforehand. The government does not establish substantial
18 planning and premeditation by showing a murder was
19 premeditated nor that some small amount of planning preceded
20 it. Substantial planning and premeditation means a
21 considerable or significant amount of planning and
22 premeditation.

23 If you find the existence of one or both
24 aggravating-- If you find the existence of one or both
25 statutory aggravating factors unanimously and beyond a

Jury Charge

1 reasonable doubt, you must then consider whether the
2 government has proved the existence of nonstatutory
3 aggravating factors. However, you may not consider any
4 nonstatutory aggravating factor unless you have found at least
5 one statutory aggravating factor. Nonstatutory aggravating
6 factors are factors the government asserts supports a sentence
7 of death, but these are not listed in the statute. This is
8 proper, and must be considered by you just as the statutory
9 aggravating factors. You may but are not required to find the
10 existence of nonstatutory aggravating factors before
11 considering imposition of the death penalty.

12 The first nonaggravating-- The first nonstatutory
13 aggravating factor alleged by the government is that defendant
14 attempted to escape from a detention facility in Chattanooga,
15 Tennessee, on April 14, 2006. The government introduced
16 evidence through witnesses pertaining to this allegation.

17 The second nonstatutory aggravating factor alleged
18 by the government is that defendant would be a danger in the
19 future to the lives and safety of others. In support of this
20 allegation the government introduced evidence or presented
21 information pertaining to defendant's involvement in an escape
22 attempt from a detention facility in Chattanooga, Tennessee;
23 defendant expressing an expectation that people wished harm to
24 Joey Marshall and that he would not testify at a future trial,
25 defendant using others to communicate with people outside of

1 the detention facility, harm to the home of Joey Marshall's
2 grandmother, and defendant failed to adapt to societal norms.

3 The third nonaggravating-- The third nonstatutory
4 aggravating factor alleged by the government is that defendant
5 caused injury, harm, and loss to Guy Luck and his family and
6 friends, as demonstrated by Guy Luck's personal
7 characteristics as an individual human being and the impact of
8 the death upon Guy Luck's loved ones. The government
9 introduced evidence or presented information pertaining to
10 this allegation through Luck's fiancée and his fiancée's
11 daughter.

12 For both the statutory and nonstatutory aggravating
13 factors, remember that the burden is on the government to
14 prove them beyond a reasonable doubt and your decision must be
15 unanimous.

16 In addition to considering aggravating factors, you
17 must consider mitigating factors. Mitigating factors differ
18 in two important respects from aggravating factors. First,
19 defendant has the burden of proving any mitigating factor.
20 However, the burden of proof is only by a preponderance of the
21 evidence and not proof beyond a reasonable doubt.

22 Second, with mitigating factors the jury need not be
23 unanimous. That means that each individual juror may consider
24 something a mitigating factor even if other jurors do not view
25 the same matter as mitigating. Any juror may consider a

Jury Charge

1 mitigating factor once it has been found by another juror.

2 The defense has alleged the following categories of
3 mitigating factors: Alternative sentence, circumstances of
4 the crime, relative culpability, background of Rejon Taylor,
5 character of Rejon Taylor, future adaptation to prison, and
6 other factors. Defendant's attorneys have included in their
7 arguments a number of what they allege to be mitigating
8 factors. The Court will provide the complete list for you in
9 the verdict form. You are permitted to consider anything else
10 about the commission of the crime or about defendant's
11 background or character or any other relevant circumstance
12 that would mitigate against imposition of the death penalty.
13 Whether a factor is supported by a preponderance of the
14 evidence and whether it is a mitigating factor is for you to
15 decide. If there are any such mitigating factors, you must
16 consider them in your deliberations.

17 After making your findings with regard to any
18 aggravating factors and any mitigating factors, you must then
19 weigh the aggravating factor or factors found to exist against
20 the mitigating factor or factors found to exist. The intent
21 factors should not enter into the weighing process. It will
22 be your responsibility to determine whether the aggravating
23 factor or factors found to exist sufficiently outweigh the
24 mitigating factor or factors found to exist to justify a
25 sentence of death. In engaging in the weighing process, you

Jury Charge

1 must avoid any influence of passion, prejudice, or undue
2 sympathy. Your deliberations should be based upon the
3 evidence and information you have seen and heard and the law
4 on which I have instructed you. Again, whether or not the
5 circumstances in this case justify a sentence of death is a
6 decision that the law leaves to you.

7 The process of weighing aggravating and mitigating
8 factors against each other, or weighing aggravating factors
9 alone if there are no mitigating factors, in order to
10 determine the proper punishment is not a mechanical process.
11 In other words, you should not simply count the number of
12 aggravating and mitigating factors and reach a decision based
13 on which number is greater. You should consider the weight
14 and value of each factor.

15 The law contemplates that different factors may be
16 given different weights or values by different jurors. Thus,
17 you may find that one mitigating factor outweighs all
18 aggravating factors combined, or that any aggravating factors
19 proved do not, standing alone, justify imposition of a
20 sentence of death. Similarly, you may unanimously find that a
21 particular aggravating factor sufficiently outweighs all
22 mitigating factors combined to justify a sentence of death.
23 You are to decide what weight or value is to be given to a
24 particular aggravating or mitigating factor in your
25 decision-making process. Keep in mind, however, that

Jury Charge

1 regardless of your findings with respect to aggravating and
2 mitigating factors, you are never required to vote for a
3 sentence of death.

4 Unlike in other types of cases, you, the jury,
5 decide the punishment in this case. The Court plays no role.
6 Whether you decide the defendant should receive the death
7 penalty or not is your sole responsibility. If you
8 unanimously determine that defendant should receive the death
9 penalty, then that is the sentence. If you unanimously
10 determine that defendant should receive a sentence of life
11 imprisonment without possibility of release, then that is the
12 sentence.

13 In your consideration of whether the death penalty
14 is justified, you must not consider the race, color, religious
15 beliefs, natural origin, or sex of either the defendant or the
16 victim. You are not to return a sentence of death unless you
17 would return a sentence of death for the crime in question
18 without regard to the race, color, religious beliefs, national
19 origin, or sex of either the defendant or the victim.

20 That concludes the part of my instructions
21 explaining the rules for considering the testimony and
22 evidence. Now let me finish up by explaining some things
23 about your deliberations in the jury room and your possible
24 verdicts.

25 You have already chosen a foreperson. This person

Jury Charge

1 will help to guide your discussions and will speak for you
2 here in court.

3 Once you start deliberating, do not talk to
4 Ms. Palmer or to me or to anyone else except each other about
5 the case. If you have any questions or messages, you must
6 write them down on a piece of paper, sign the paper, and then
7 give it to Ms. Palmer. Ms. Palmer will give the questions to
8 me, and I will respond as soon as I can. I may have to talk
9 to the lawyers about what you have asked. So it may take me
10 some time to get back to you. Any questions or messages
11 normally should be sent to me through your foreperson.

12 One more thing about messages. Do not ever write
13 down or tell anyone outside the jury room how you stand on
14 your votes. For example, do not write down or tell anyone
15 except your fellow jurors what your vote happens to be. That
16 must stay secret until you are finished.

17 Now that all the evidence and other proper
18 information is in and the arguments are completed, you are
19 free to talk about the case in the jury room. In fact, it is
20 your duty to talk with each other about the evidence and other
21 proper information and to make every reasonable effort you can
22 to reach unanimous agreement. Talk with each other, listen
23 carefully and respectfully to each other's views, and keep an
24 open mind as you listen to what your fellow jurors have to
25 say. Try your best to work out your differences. Do not

Jury Charge

1 hesitate to change your mind if you are convinced other jurors
2 are right and that your original position was wrong. But do
3 not ever change your mind just because other jurors see things
4 differently or just to get the case over with. In the end,
5 your vote must be exactly that—your own vote. It is
6 important for you to reach unanimous agreement but only if you
7 can do so honestly and in good conscience.

8 No one will be allowed to hear your discussions in
9 the jury room, and no record will be made of what you say. So
10 you should all feel free to speak your minds. Listen
11 carefully to what the other jurors have to say, and then
12 decide for yourself how to decide each question on the special
13 verdict form.

14 The verdict form is self-explanatory. I don't think
15 you'll have any difficulty with it once you start it. There
16 are some instructions in bold print that will give you some
17 guidance. And I think, as I said, the questions are
18 self-explanatory. The verdict form will be furnished to you
19 along with the evidence in the case.

20 It is about 4:30 now. I think it's probably too
21 late to have you start your deliberations. Let me have you go
22 into the jury room, though, and Ms. Palmer will come and get
23 you in a few minutes. We probably will release you for the
24 day. So the jury should step outside to the jury room now.

25 (The jury exited the courtroom, and the proceedings

1 continued as follows:)

2 THE COURT: Please be seated.

3 Mr. Neff, having heard the Court's instructions,
4 does the government have any objection to the instructions as
5 given?

6 MR. NEFF: No, thank you, Your Honor.

7 THE COURT: Ms. Cory, the Court believes that the
8 defense does have one objection. Is that correct?

9 MS. CORY: Your Honor, I would say first that we
10 stand upon the submissions and argument we made earlier today
11 as what we believe the jury instructions should have said. But
12 our most serious concern is the sentence that Your Honor
13 omitted on Page 22. You had, in your original instructions,
14 said, "If you cannot unanimously agree upon a sentence, then
15 the law provides the defendant will receive a sentence of life
16 imprisonment with no possibility for release." That is a
17 correct statement of the law. And we would request that that
18 one sentence be placed back into Page 22.

19 THE COURT: This was a matter that the Court
20 discussed during the charge conference. The government
21 objected to the inclusion of that sentence, and pointed the
22 Court to some cases. I believe there was a Supreme Court
23 decision, *Jones*. And the Court had occasion to review that
24 decision, along with decisions from lower courts, and the Court
25 determined that the government was correct that the courts

1 indicate the trial judge should not include that language in
2 its instructions. So the Court took it out.

3 MR. WILLIAM ORTWEIN: Your Honor, if we're through
4 with the charge, I have a housekeeping matter.

5 THE COURT: Okay. I would like to go ahead and let
6 the jury go unless someone wishes to keep them for some reason.

7 MR. WILLIAM ORTWEIN: That's fine. All I wanted to
8 state was, the slide I objected to, I believe Mr. Poole used in
9 his opening argument, Your Honor, I think, said that I could go
10 ahead and introduce it for the record. I submitted it to the
11 clerk with the proper number designation as an exhibit and put
12 an AP after it, that's -- to be sure it's part of the record.

13 THE COURT: The Court will order, then, that exhibit
14 be made a part of the record for review in case there is any
15 appeal in this case by a higher court.

16 MR. WILLIAM ORTWEIN: Thank you.

17 (Defendant's Exhibit DS19 was received for
18 identification only.)

19 MR. CLEMENTS: Judge, I introduced three exhibits
20 that were not to go to the jury, just marked for
21 identification.

22 THE COURT: Regarding Mr. McNally?

23 MR. CLEMENTS: Yes, involving Mr. McNally and
24 Dr. Bell. I just wanted to make sure they didn't go back to
25 the jury. Do you want me to take care of that, or Ms. Palmer,

1 or --

2 THE COURT: No, what we will do-- In fact, you could
3 do it tonight if you wish, since the jury is going to be out.
4 I will have you, both sides, get together with Ms. Palmer to go
5 through the exhibits and make sure only those exhibits
6 appropriate for the jury go back and that nothing that was not
7 introduced for purposes of jury review goes back. I guess you
8 could do that this afternoon. And then tomorrow morning she
9 could just deliver the exhibits to the jury and tell the jury
10 they could start deliberating.

11 What I wanted to do now was, in case the Court had
12 erred in its instructions, to bring the jury back and just
13 reinstruct them on a point of error. So that's why I wanted
14 to send them out. But I would like to go ahead and release
15 them now.

16 MR. CLEMENTS: That's fine.

17 THE COURT: Okay. Let's bring the jury back in,
18 then.

19 (The jury entered the courtroom, and the proceedings
20 continued as follows:)

21 THE COURT: Okay. Be seated.

22 Ladies and gentlemen, in view of the hour, I think
23 it makes more sense to release you for the day and have you
24 come back tomorrow, refreshed, and you can start deliberating
25 then.

1 It is very important that while you are out you not
2 discuss the case or allow anyone to discuss the case with you.
3 Do not watch anything on television about this case. There
4 were members of the media in the courtroom today. So I think
5 we can safely assume that there will be some media coverage of
6 this case. There will likely be things on the television,
7 things on the radio, and information in the newspapers. So
8 you must not allow any of that to be exposed to you.

9 When you come back tomorrow, go directly to the jury
10 deliberation room. Ms. Palmer will bring the evidence in, and
11 she will bring in copies of the Court's charge, and she will
12 tell you that you can start deliberating. So you should be
13 able to start discussing the case shortly after 9:00 tomorrow
14 morning. So I ask you to come back at 9:00. And be safe.
15 The jury is excused.

16 (The jury exited the courtroom, and the proceedings
17 continued as follows:)

18 THE COURT: Okay. The jury is out. I would ask the
19 attorneys, then, to stick around and get with Ms. Palmer to go
20 over the evidence to ensure that only appropriate evidence or
21 information gets back to the jury, and that the appellate
22 exhibits and anything else that was not introduced for the
23 jury's use goes back.

24 Is there anything else we need to discuss, Mr. Neff?

25 MR. WILLIAM ORTWEIN: Briefly-- I'm sorry.

1 MR. NEFF: Judge, just what the Court wishes for the
2 attorneys to do tomorrow. Would you have us show up here at
3 9:00, or --

4 THE COURT: You do need to be here at 9:00. We have
5 a bunch of alternates, and the Court would like to release the
6 alternates. The Court would like to do that in open court. I
7 think if we're doing that, the defendant has a right to be
8 present for it. And if the defendant is going to be here, I
9 think the lawyers ought to be here. If the defense attorneys
10 are going to be here, the government attorneys should probably
11 be here.

12 MR. NEFF: That's fine, Judge.

13 MR. WILLIAM ORTWEIN: Otherwise, can we do like
14 during guilt or innocence, leave a cell phone number? We're
15 just five minutes away.

16 THE COURT: Yes.

17 MR. CLEMENTS: You want to see us first thing in the
18 morning?

19 THE COURT: I'm sorry?

20 MR. CLEMENTS: I'm going to be here at 9:00 anyway.

21 THE COURT: Well, Mr. Taylor is represented by a
22 number of lawyers. I don't think all of the lawyers have to be
23 here at 9:00. I think he does have to be represented by a
24 lawyer. What you may want to do is delegate that to the
25 youngest member of the team.

1 MR. CLEMENTS: Thank you.

2 MR. NEFF: Ms. Cory?

3 THE COURT: Is there anything further, then, that we

4 need to take up?

5 MR. NEFF: No, thank you, Your Honor.

6 MR. CLEMENTS: No, thank you.

7 THE COURT: Ms. Palmer.

8 (Evening recess.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25